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Supreme Court of the United States

OCTOBER TERM, 1952

No. ~~590~~ 14

ROBERT M. WIEMAN, NANCY KENT ZIEBUR, WERNER C. BAUM, ET AL., APPELLANTS,

vs.

PAUL W. UPDEGRAFF, THE BOARD OF REGENTS OF THE OKLAHOMA AGRICULTURAL COLLEGES, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED FEBRUARY 16, 1952

Probable Jurisdiction Noted March 10, 1952

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAR. 31, 1952

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[fol. 1] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 35160

ROBERT M. WIEMAN and NANCY KENT ZIEBUR, Plaintiffs in Error,

vs.

PAUL W. UPDEGRAFF, Defendant in Error,

vs.

THE BOARD OF REGENTS OF THE OKLAHOMA AGRICULTURAL COLLEGES, and A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, Defendants in Error

PETITION IN ERROR OF ROBERT M. WIEMAN AND NANCY KENT ZIEBER—Filed June 14, 1951

The said Robert M. Wieman and Nancy Kent Ziebur, plaintiffs in error, complain of the said Paul W. Updegraff, defendant in error, for that the said Paul W. Updegraff at the January, 1951, term of the District Court of Oklahoma County, State of Oklahoma, recovered a judgment by the consideration of said court against the said Robert M. Wieman and Nancy Kent Ziebur, and complain of the said The [fol. 2] Board of Regents of the Oklahoma Agricultural Colleges, and A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, defendants in error, for that the said The Board of Regents of the Oklahoma Agricultural Colleges, and A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, at the said term of said court, recovered a judgment by the consideration of said court against the said Robert M. Wieman and Nancy Kent Ziebur, in a certain action then pending in said court wherein the said Paul W. Updegraff was plaintiff and the said The Board of Regents of the Oklahoma Agricultural Colleges, and A. S. J. Shaw,

[fol. 24] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

No. 35160

WERNER C. BAUM, SAMUEL HUNT LEE, MALCOLM CORRELL, Lillian A. Schmoe, and Luella R. Nietz, Plaintiffs in Error,

vs.

PAUL W. UPDEGRAFF, Defendant in Error,

vs.

THE BOARD OF REGENTS OF THE OKLAHOMA AGRICULTURAL COLLEGES, and A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, Defendants in Error

PETITION IN ERROR OF WERNER C. BAUM, SAMUEL HUNT LEE, MALCOLM CORRELL, LILLIAN A. SCHMOE AND LUELLA R. NIETZ—Filed June 14, 1951

The said Werner C. Baum, Samuel Hunt Lee, Malcolm Correll, Lillian A. Schmoe, and Luella R. Nietz, plaintiffs in error, complain of the said Paul W. Updegraff, defendant in error, for that the said Paul W. Updegraff at the January, 1951, term of the District Court of Oklahoma County, State of Oklahoma, recovered a judgment by the consideration of said court against the said Werner C. Baum, Samuel Hunt Lee, Malcolm Correll, Lillian A. Schmoe, and Luella R. Nietz, and complain of the said The Board of Regents of the Oklahoma Agricultural Colleges, and A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartright, State Auditor of the State of Oklahoma, defendants in error, for that the said [fol. 25] The Board of Regents of the Oklahoma Agricultural Colleges, and A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartright, State Auditor of the State of Oklahoma, at the said term of said court, recovered a judgment by the consideration of said court against the said Werner C. Baum, Samuel Hunt Lee, Malcolm Correll, Lillian A. Schmoe, and Luella R. Nietz, in a

certain action then pending in said court wherein the said Paul W. Updegraff was plaintiff and the said The Board of Regents of the Oklahoma Agricultural Colleges, and A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, were defendants, and the said Werner C. Baum, Samuel Hunt Lee, Malcolm Correll, Lillian A. Schmoe, and Luella R. Nietz were intervenors by permission and order of said court. The original case-made (hereinafter abbreviated (C. M.), duly stipulated, signed, attested and filed, is hereto attached, marked "Exhibit A" and made a part of this Petition in Error, and the said Werner C. Baum, Samuel Hunt Lee, Malcolm Correll, Lillian A. Schmoe and Luella R. Nietz, plaintiffs in error, aver that there is error in said record and proceedings in this to-wit:

1. Said court erred in overruling the motion of said plaintiffs in error for a new trial, filed in said court May 22, 1951 (C. M. 216) by order entered May 22, 1951 (C. M. 226). [fol. 26] 2. Said court erred in overruling said motion of said plaintiffs in error for a new trial, filed in said court May 21, 1951 (C. M. 206) by order entered May 22, 1951 (C. M. 226).

3. Said court erred in overruling supplemental motion for new trial of said plaintiffs in error filed May 24, 1951 (C. M. 229) by order entered May 24, 1951 (C. M. 233).

4. Said court erred in denying said plaintiffs in error the right to prepare and present suggested findings of fact and conclusions of law (C. M. 84).

5. Said court erred in rendering judgment terminating, or forfeiting the contracts of employment between the said plaintiffs in error and the Board of Regents for Oklahoma Agricultural Colleges (Journal Entry 6th at C. M. 240 and 245).

6. Said court erred in enjoining the Board of Regents of Oklahoma Agricultural Colleges from paying said plaintiffs in error for services rendered said Board of Regents (C. M. 240 and 245).

7. Said court erred in refusing to grant said plaintiffs' in error petition for a mandatory injunction requiring said Board of Regents and said A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State

Auditor of the State of Oklahoma, to make payments to said plaintiffs in error of their compensation due under said contracts of employment.

7a. That the errors assigned under 5, 6, and 7 above constitute error in that the judgment of said court in these respects is declared to be authorized in said judgment by [fol. 27] House Bill No. 8 of the 23rd Oklahoma Legislature, which House Bill No. 8, as applied to said plaintiffs in error by the judgment of said court, violates the constitutional rights of said plaintiffs in error under the following provisions of the Oklahoma Constitution, in that House Bill No. 8, enacted by the 23rd Oklahoma Legislature, and signed by the Governor of the State of Oklahoma April 9, 1951, each section thereof, the Oath set forth in Section 2 thereof, and each word, phrase, clause, sentence or other portion of said Oath constitutes a purported effort by the Legislature of the State of Oklahoma to govern Oklahoma Agricultural and Mechanical College enacted in violation of Article VI, Section 31a, reposing in said Board of Regents the exclusive power to govern said College; and

Constitutes a Bill of attainder and ex post facto law, and a law impairing the obligations of contracts enacted in violation of Article II, Section 2, prohibiting the passing of any Bill of attainder, ex post facto law, or law impairing the obligations of contracts; and

Constitutes the deprivation of liberty and property of said plaintiffs in error without due process of law in violation of Article II, Section 7; and

Constitutes an unlawful delegation of legislative authority to the government of the United States and to an agency and an official thereof in violation of Article V, Section 1, vesting legislative authority in the State Legislature; and [fol. 28] Constitutes the requirement of a religious test for the exercise of civil and political rights in violation of Article 1, section 2, prohibiting such test; and

Constitutes the inclusion of a subject in said House Bill not expressed in the title thereof, insofar as it effects a forfeiture of office or employment in violation of Article V, Section 57; and

Constitutes the exercise of a judicial function by the State Legislature in declaring a forfeiture of office or employment

in violation of Article IV providing that neither branch of government shall exercise the powers properly belonging to either of the other, and in each such respects violates the rights of said plaintiffs in error under said contract of employment, protected by each of said constitutional provisions; and violates the constitutional rights of said plaintiffs in error under the following provisions of the Constitution of the United States:

(a) Article 1, Section 8, providing that Congress shall have the power to raise and support armies, to provide and maintain a navy, to make rules for the government and the regulation of the land and naval forces; to organize, arm and discipline the militia; (that the Congress of the United States of America, prior to the effective date of the Act, did not consent that the State of Oklahoma exercise any of said powers constitutionally delegated to the Congress but did enact a comprehensive, complete and fully integrated legis- [fol. 29] lative scheme in the exercise of each and all of such powers; that said Act and each section thereof, and the Oath and each word, phrase, clause, sentence or other portion thereof, constitutes a purported attempt to exercise such powers so delegated and now exercised by the Congress of the United States of America);

(b) Article I, Section 10, providing that no state shall pass any Bill of Attai-der or any law impairing the obligation of contracts; (that said Act and each section thereof, and the Oath and each word, phrase, clause, sentence or other portion thereof, impairs the obligations of said contracts of employment and constitutes a Bill of attainder as to said plaintiffs in error);

(c) Article VI, Section 1, providing that the Constitution and laws of the United States of America which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States of America shall be the supreme law of the land; (that said Act and each section thereof, and the Oath and each word, phrase, clause, sentence or other portion thereof, violates the Constitution and laws of the United States of America in the particulars heretofore and hereafter enumerated, and is in violation of treaties made under the authority of the United States of America, including the treaty effecting the

membership of the United States of America in the United Nations Organization);

[fol. 30] (d) The Fourteenth Amendment of the Constitution of the United States of America providing that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws;

(e) Article II, section 8, delegating to the Congress the power to regulate commerce with foreign nations;

in that House Bill No. 8 enacted by the 23rd Oklahoma Legislature, and signed by the Governor of the State of Oklahoma April 9, 1951, each section thereof, the Oath set forth in section 2 thereof, and each word, phrase, clause, sentence or other portion of said Oath, violates each and all of the said constitutional provisions hereinabove referred to, and violates the rights of plaintiffs in error under said contracts of employment, protected by each of said constitutional provisions.

8. Said court erred in terminating said contracts of employment and in preventing said payment of compensation thereunder when said court in the same judgment in which such denial occurred extended to others in the same class of said plaintiffs in error other and additional protection for their contracts of employment and their rights to receive compensation thereunder as set forth in the 4th, 5th, 8th, 13th and 14th paragraphs of said judgment (C.M. 238; 239, 240, 244 and 245 resp.), hereinafter set forth in paragraphs 13, 14, 17, 22 and 23 respectively.

9. The court erred in its findings of fact because such findings do not include relevant and material facts proved by competent evidence, agreements and stipulations in this case.

[fol. 31] 10. The court erred in concluding that said plaintiffs in error willfully refused to take the oath in that the competent evidence in this case shows that such refusal was not willful and in that whether or not the refusal was willful is a question of fact, which question of fact was not proved in this case.

11. Said court erred in rendering judgment concluding that said plaintiffs in error willfully refused to take the oath and in rendering judgment terminating said contracts of

employment and enjoining the payment of compensation due thereunder (Journal Entry 6th, C.M. 240), when in the same judgment said court afforded protection to others in the same class with plaintiffs in error not taking the oath, by the 4th, 5th, 8th, 13th and 14th parts of said judgment (C.M. 238, 239, 240, 244 and 245 resp.), thus denying to plaintiffs in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

In making the following conclusions and in rendering judgment thereupon, said court erred for the reason that each of the following conclusions, and the judgment rendered thereupon, having purportedly been authorized by the provisions of House Bill No. 8 of the 23rd Oklahoma Legislature, is contrary to law, and violates each and all of the provisions of the Constitution of the State of Oklahoma, hereinabove set forth, and the provisions of the Constitution of the United States, hereinabove set forth.

[fol. 32] 12. Said court erred in concluding and rendering judgment that: "the teachers, professors, and other employees of the defendant, Board of Regents, may be paid from State funds for the first nine days of May, 1951; and it is so ordered." (C.M. 238, 3rd.)

13. Said court erred in concluding and rendering judgment that: "each teacher, professor and employee who has wilfully or negligently failed to take and subscribe to the oath, as provided in Section 2, Enrolled House Bill No. 8, by midnight May 9, 1951, cannot be paid from State funds, after midnight May 9, 1951, and concludes that any teacher, professor and employee absent from the State May 9th, 1951, on authorized leave, may be paid regularly and as provided by law during the time of any such absence on authorized leave, and up to and including thirty (30) days after terminating such leave, and up to and returning to work or to the duties of the office or employment of such person; and thereafter in usual and proper form, provided that such person has, during such thirty-day period after returning from said leave, taken said oath in manner and form as prescribed by law, unless an honest mistake or clerical error has been made in any oath that might have been filed, in which event a correction may be made or an amended

State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, were defendants, and the said Robert M. Wieman and Nancy Kent Ziebur were intervenors by permission and order of said court. The original case-made (hereinafter abbreviated C.M.), duly stipulated, signed, attested and filed, is hereto attached, marked "Exhibit A" and made a part of this Petition in Error, and the said Robert M. Wieman and Nancy [fol. 3] Kent Ziebur, plaintiffs in error, aver that there is error in said record and proceedings in this to-wit:

1. Said court erred in overruling the motion of said plaintiffs in error for a new trial, filed in said court May 22, 1951 (C.M. 216) by order entered May 22, 1951 (C.M. 226).

2. Said court erred in overruling said motion of said plaintiffs in error for a new trial, filed in said court May 21, 1951, (C.M. 206) by order entered May 22, 1951 (C.M. 226).

3. Said court erred in overruling supplemental motion for new trial of said plaintiffs in error filed May 24, 1951 (C.M. 229) by order entered May 24, 1951 (C.M. 233).

4. Said court erred in denying said plaintiffs in error the right to prepare and present suggested findings of fact and conclusions of law (C.M. 84).

5. Said court erred in rendering judgment terminating, or forfeiting the contracts of employment between the said plaintiffs in error and the Board of Regents for Oklahoma Agricultural Colleges (Journal Entry 6th at C.M. 240 and 245).

[fol. 4] 6. Said court erred in enjoining the Board of Regents of Oklahoma Agricultural Colleges from paying said plaintiffs in error for services rendered said Board of Regents (C.M. 240 and 245).

7. Said court erred in refusing to grant said plaintiffs' in error petition for a mandatory injunction requiring said Board of Regents and said A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, to make payments to said plaintiffs in error of their compensation due under said contracts of employment.

7a. That the errors assigned under 5, 6 and 7 above constitute error in that the judgment of said court in these respects is declared to be authorized in said judgment by

House Bill No. 8 of the 23rd Oklahoma Legislature, which House Bill No. 8, as applied to said plaintiffs in error by the judgment of said court, violates the constitutional rights of said plaintiffs in error under the following provisions of the Oklahoma Constitution, in that House Bill No. 8, enacted by the 23rd Oklahoma Legislature, and signed by the governor of the State of Oklahoma April 9, 1951, each section thereof, [fol. 5] the Oath set forth in Section 2 thereof, and each word, phrase, clause, sentence or other portion of said Oath constitutes a purported effort by the Legislature of the State of Oklahoma to govern Oklahoma Agricultural and Mechanical College enacted in violation of Article VI, section 31a, reposing in said Board of Regents the exclusive power to govern said college; and

Constitutes a Bill of attainder and ex post facto law, and a law impairing the obligations of contracts enacted in violation of Article II, Section 2, prohibiting the passing of any Bill of Attainder, ex post facto law, or law impairing the obligations of contracts; and

Constitutes the deprivation of liberty and property of said plaintiffs in error without due process of law in violation of Article II, Section 7; and

Constitutes an unlawful delegation of legislative authority to the government of the United States and to an agency and an official thereof in violation of Article V, Section 1, vesting legislative authority in the State Legislature; and

Constitutes the requirement of a religious test for the exercise of civil and political rights in violation of article I, Section 2, prohibiting such test; and

[fol. 6] Constitutes the inclusion of a subject in said House Bill not expressed in the title thereof, insofar as it effects a forfeiture of office or employment in violation of Article V, Section 57; and

Constitutes the exercise of a judicial function by the State Legislature in declaring a forfeiture of office or employment in violation of Article IV providing that neither branch of the government shall exercise the powers properly belonging to either of the other, and in each such respects violates the rights of said plaintiffs in error under said contract of employment, protected by each of said constitutional provisions; and violates the constitutional rights of said plain-

tiffs in error under the following provisions of the Constitution of the United States:

(a) Article I, Section 8, providing that Congress shall have the power to raise and support armies, to provide and maintain a navy, to make rules for the government and the regulation of the land and naval forces; to organize, arm and discipline the militia; [fol. 7] (that the Congress of the United States of America, prior to the effective date of the Act, did not consent that the State of Oklahoma exercise any of said powers constitutionally delegated to the Congress but did enact a comprehensive, complete and fully integrated legislative scheme in the exercise of each and all of such powers; that said Act and each section thereof, and the Oath and each word, phrase, clause, sentence or other portion thereof, constitutes a purported attempt to exercise such powers so delegated and now exercised by the Congress of the United States of America);

(b) Article I, Section 10, providing that no state shall pass any Bill of Attainder or any law impairing the obligation of contracts; (that said Act and each section thereof, and the Oath and each word, phrase, clause, sentence or other portion thereof, impairs the obligations of said contracts of employment and constitutes a Bill of attainder as to said plaintiffs in error);

[fol. 8] (c) Article VI, Section 1, providing that the Constitution and laws of the United States of America which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States of America shall be the supreme law of the land; (that said Act and each section thereof, and the Oath and each word, phrase, clause, sentence or other portion thereof, violates the constitution and laws of the United States of America in the particulars heretofore and hereafter enumerated, and is in violation of treaties made under the authority of the United States of America including the treaty effecting the membership of the United States of America in the United Nations Organization);

(d) The Fourteenth Amendment of the Constitution of the United States of America providing that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws; [fol. 9] (e) Article II, Section 8, delegating to the Congress the power to regulate commerce with foreign nations;

in that House Bill No. 8 enacted by the 23rd Oklahoma Legislature, and signed by the Governor of the State of Oklahoma April 9, 1951, each section thereof, the Oath set forth in section 2 thereof, and each word, phrase, clause, sentence, or other portion of said Oath, violates each and all of the said constitutional provisions hereinabove referred to, and violates the rights of plaintiffs in error under said contracts of employment, protected by each of said constitutional provisions.

8. Said court erred in terminating said contracts of employment and in preventing said payment of compensation thereunder when said court in the same judgment in which such denial occurred extended to others in the same class of said plaintiffs in error other and additional protection for their contracts of employment and their rights to receive compensation thereunder as set forth in the 4th, 5th, 8th, [fol. 10] 13th and 14th paragraphs of said judgment (C. M. 238, 239, 240, 244 and 245 resp.), hereinafter set forth in paragraphs 13, 14, 17, 22 and 23 respectively.

9. The court erred in its findings of fact because such findings do not include relevant and material facts proved by competent evidence, agreements and stipulations in this case.

10. The court erred in concluding that said plaintiffs in error willfully refused to take the oath in that the competent evidence in this case shows that such refusal was not willful and in that whether or not the refusal was willful is a question of fact, which question of fact was not proved in this case.

11. Said court erred in rendering judgment concluding that said plaintiffs in error willfully refused to take the oath and in rendering judgment terminating said contracts of employment and enjoining the payment of compensation due

thereunder (Journal Entry 6th, C. M. 240), when in the same judgment said court afforded protection to others in the same class was plaintiffs in error not taking the oath by the 4th, 5th, 8th, 13th and 14th parts of said judgment [fol. 11] (C. M. 238, 239, 240, 244, and 245 resp.), thus denying to plaintiffs in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

In making the following conclusions and in rendering judgment thereupon, said court erred for the reason that each of the following conclusions, and the judgment rendered thereupon, having purportedly been authorized by the provisions of House Bill No. 8 of the 23rd Oklahoma Legislature, is contrary to law, and violates each and all of the provisions of the Constitution of the State of Oklahoma, hereinabove set forth, and the provisions of the Constitution of the United States, hereinabove set forth.

12. Said court erred in concluding and rendering judgment that: "the teachers, professors, and other employees of the defendant, Board of Regents, may be paid from State funds for the first nine days of May, 1951; and it is so ordered." (C. M. 238, 3rd.)

[fol. 12] 13. Said court erred in concluding and rendering judgment that: "each teacher, professor and employee who has wil-fully or negligently failed to take and subscribe to the oath, as provided in Section 2, Enrolled House Bill No. 8, by midnight May 9, 1951, cannot be paid from State funds, after midnight May 9th, 1951, and concludes that any teacher, professor and employee absent from the State May 9th, 1951, on authorized leave, may be paid regularly and as provided by law during the time of any such absence on authorized leave, and up to and including thirty (30) days after terminating such leave, and up to and returning to work or to the duties of the office or employment of such person; and thereafter in usual and proper form, provided that such person has, during such thirty-day period after returning from said leave, taken said oath in manner and form as prescribed by law, unless an honest mistake or clerical error has been made in any oath that might have [fol. 13] been filed, in which event a correction may be made or an amended oath filed, to clearly set it out; it is so ordered." (C. M. 239, 4th.)

14. Said court erred in concluding and rendering judgment that: "each teacher, professor, and employee who has taken and subscribed to an oath by midnight May 9, 1951, and filed it with the officer, agency, authority, department, commission, or institution in and for which the person executing the oath or affirmation is employed or appointed or to which said person is elected, and which oath taken and subscribed is not the oath provided in Section 2 of the Act, cannot take and subscribe to a new oath, unless an honest mistake or clerical error has been made in the preparation of the oath signed; that such teacher, professor and employee who fails to take and subscribe to the oath or affirmation required in said Act has forfeited his or her right to receive pay; it is so ordered." (C. M. 239, 5th.)

[fol. 14] 15. Said court erred in concluding and rendering judgment that: "the intervenors, and each of them, did not take and subscribe to the oath as provided in section 2 of the Act and wil fully refused to take that oath and by reason thereof the Board of Regents is enjoined from paying them, and their employment is terminated. It is so ordered." (C. M. 240, 6th.)

16. Said court erred in concluding and rendering judgment that: "the words 'if necessary', following the phrase, 'I will take up arms in the defense of the United States in time of War, or National Emergency, if necessary', means that the Congress of the United States within the powers granted them under the Constitution of the United States and the various selective laws passed by the Congress, will determine when and if it is necessary for any person taking and subscribing to the oath in this Act to bear arms; that such proviso is constitutional. It is so ordered." (C. M. 240, 7th.)

[fol. 15] 17. Said court erred in concluding and rendering judgment that: "non-citizens of the United States employed by the State must take and subscribe to the oath as provided in the Act, and that the words, 'if necessary' following the phrase, 'I will take up arms in the defense of the United States in time of War, or National Emergency, if necessary', as applied to them does not violate any of the constitutional rights guaranteed them under the Fourteenth Amendment, or other Constitutional or statutory provisions of the United States, or the Constitution or any

statutory provisions of the State of Oklahoma, nor does it violate any treaty agreement with other nations or between the signers of the United Nations. The Congress of the United States, in various selective service, if any, the nationals of other countries must render, taking into consideration the treaty agreements with each country and between the United Nations. It is so ordered." (C. M. 241, 8th.)

18. Said court erred in concluding and rendering judgment that: "that portion of the said oath which requires the teachers, professors and employees of the defendant [fol. 16] Board of Regents, including these intervenors, to state:

> 'I am not affiliated directly or indirectly • • • with any agency, party, organization, association, or group whatever which has been officially determined by the United States Attorney General or other authorized agency of the United States to be a communist front or subversive organization; • • •'

and to further state:

> 'that within the five (5) years immediately preceding the taking of this oath (or affirmation) I have not been a member • • • of any agency, party, organization, association, or group whatever which has been officially determined by the United States Attorney General or other authorized public agency of the United States to be a communist front or subversive organization,'

are valid provisions of the law. • • • that said provisions are constitutional in all respects and are applicable to any such organization which prior to April 9, 1951, has [fol. 17] been officially determined by the United States Attorney General or other authorized agency of the United States to be a communist front or subversive organization, and the words 'officially determined' mean such listed organizations as have been afforded an opportunity to present their case; Joint Anti-Fascist Refugee Committee, Petitioner, v. J. Howard McGrath, Attorney General of the United States, et al. (decided by the Supreme Court of the United States April 31, 1951), and it was the express inten-

tions of the legislature, by the words 'has been' to mean only those organizations found to be subversive prior to the effective date of the Act, to-wit: April 9, 1951, and does not apply to any organization declared to be subversive after April 9, 1951, and the Court concludes that the legislature may adopt by reference any report or lists of the United States Attorney General or other authorized agency of the United States wherein it has been officially determined that any organization is a communist front or other subversive organization. It is so ordered." (C. M. [fol. 18] 241, 242, 243, 9th.)

19. Said court erred in concluding and rendering judgment that: "the legislature had the right, within the 'police power', to enact legislation affecting the vital welfare of the State and Nation, and that Enrolled House Bill No. 8 passed by the Twenty-third Legislature does not impair the obligation of contracts; it is so ordered." (C. M. 243, 10th.)

20. Said court erred in concluding and rendering judgment that: "the court does hereby take judicial notice of the threat to our liberties and way of life, and that prior to the passage of this Act a person could obtain a job in our colleges, universities and public schools without declaring his loyalty to his employer, the people of the State of Oklahoma, and of the stress of the times and the need for protection from our enemies, foreign and domestic, and of the advocacy of persons, groups and organizations to overthrow our government by force and violence; and that the [fol. 19] legislature of Oklahoma, in the exercise of its police powers, has wide discretion in determining what is necessary, as an exercise of police power, to protect the general welfare of its people, and so far as constitutional issue is concerned the powers of the State, when otherwise justified, is not diminished because of a private contract which may be affected. All contractual obligations between the Board of Regents and teachers, professors and employees, including the intervenors, are subject to Enrolled House Bill No. 8 of the Twenty-third Legislature; it is so ordered.

" * * that in the event the Board of Regents found that an honest mistake has been made in the oath so filed,

in the name, designation of the position held, or any other clerical error, that said error may be corrected by the taking of a new oath." (C. M. 243, 244, 11th)

21. Said court erred in concluding and rendering judgment that: "the injunction should be made permanent in [fol. 20] all things as prayed in plaintiff's petition; it is so ordered." (C. M. 244, 12th)

22. Said court erred in concluding and rendering judgment that: "there may be clipped to the original oath a statement of a non-citizen, if he so desires, the following statement:

'I further state that I am a citizen, or subject, of ——, and that I have taken the foregoing oath, subject to my allegiance to, and rights and obligations, as a citizen, or subject, of ——.

Dated this — day of ——, 1951.'

And upon timely filing thereof, his rights to receive compensation shall not be prejudiced." (C. M. 244, 245, 13th)

23. Said court erred in concluding and rendering judgment that: "In view of the findings and judgment of this Court, this 21st day of May, 1951, made in this litigation [fol. 21] and this hearing, to the effect that non-nationals may be permitted to execute an additional and explanatory statement along with their oath of allegiance, the court now finds and concludes that all non-nationals who have heretofore, because of misunderstanding or honest mistake, have failed, up to this time, to execute the oath in the manner and form as provided herein, together with the explanatory statement, as provided herein, that all such non-nationals may have a reasonable time after the execution of this judgment, this date, by the Court, within which to properly prepare, take and file said oath, not to exceed 10 days; and it is so ordered." (C. M. 245, 14th)

24. Said court erred in concluding and rendering judgment as follows: "It is therefore ordered, adjudged and decreed by the Court that the injunction should be made permanent in all things as set forth in the conclusions of law, and that intervenors' petition for mandatory injunc- [fol. 22] tion is in all things denied, and costs are assessed against the defendants and the intervenors." (C. M. 245)

25. Said court erred in rendering judgment for defendants in error (C. M. 235 to 245, inclusive).

Wherefore, plaintiffs in error, Robert M. Wieman and Nancy Kent Ziebur, pray that said judgment and each part thereof so rendered may be reversed, set aside and held for naught, and that a judgment may be rendered in favor of said plaintiffs in error, and that said plaintiffs in error be restored to all rights that he has lost by the rendition of such judgment and each part thereof, and that judgment be rendered for said plaintiffs in error directing the Board of Regents of the Oklahoma Agricultural Colleges, and A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of [fol. 23] Oklahoma, directing them to pay to said plaintiffs in error the sums due under the contract between the said Board of Regents and plaintiffs in error up to and including the end of the current fiscal year, and for such other relief as to the Court may seem just.

Robert M. Wieman and Nancy Kent Ziebur, Plaintiffs in Error, by Robert J. Emery, Don Emery, Their Attorneys.

of Oklahoma to the Government of the United States of America and to an executive office thereof;

(e) Article 1, Section 2, providing that no religious test [fol. 51] shall ever be required for the exercise of civil and political rights; that the Act and each section thereof, the Oath and each word, phrase, clause, sentence or other portion thereof, constitutes a religious test as a requirement for the exercise of civil and political rights;

(f) Article V, Section 57, providing that every act of the Legislature shall embrace but one subject; that if any subject be embraced in any act contrary to the provisions of this Section, such act shall be void only as to so much of the law as may not be expressed in the title thereof; that the Act and each section thereof, the Oath and each word, phrase, clause, sentence or other portion thereof, embraces several subjects not expressed in the title of House Bill No. 8, including the forfeiture of office or employment in Section 1 thereof;

(g) Article IV providing that the Legislative Executive and Judicial powers shall be separate and distinct and neither shall exercise the powers properly belonging to either of the other; that the Act and each section thereof, the Oath and each word, phrase, clause, sentence, or other portion thereof, constitutes the exercise of a judicial function, including the purported effort to declare a forfeiture of office or employment;

That the Act and each section thereof, the Oath and each [fol. 52] word, phrase, clause, sentence or other portion thereof, violates the following provisions of the Constitution of the United States of America:

(a) Article I, Section 8, providing that Congress shall have the power to raise and support armies, to provide and maintain a navy, to make the rules for the government and the regulation of the land and naval forces; to organize, arm and discipline the militia;

That the Congress of the United States of America, prior to the effective date of the Act, did not consent that the State of Oklahoma exercise any of said powers constitutionally delegated to the Congress but did enact a comprehensive, complete and fully integrated legislative scheme in the exercise of each and all of such powers; that said Act and each

section thereof, and the Oath and each word, phrase, clause, sentence or other portion thereof, constitutes a purported attempt to exercise such powers so delegated and now exercised by the Congress of the United States of America;

(b) Article I, Section 10, providing that no state shall impair the obligations of contracts; that said Act and each section thereof, and the Oath and each word, phrase, clause, sentence or other portion thereof, impairs the obligations of each intervenor's contract;

(c) Article VI, Section 1, providing that the Constitution and laws of the United States of America which shall be made in pursuance thereof, and all treaties made, or which [fol. 53] shall be made, under the authority of the United States of America shall be the Supreme law of the land; that said Act and each section thereof, and the Oath and each word, phrase, clause, sentence or other portion thereof, violates the Constitution and laws of the United States of America in the particulars heretofore and hereafter enumerated, and is in violation of treaties made under the authority of the United States of America, including the treaty affecting the membership of the United States of America in the United Nations Organizations;

(d) The Fourteenth Amendment of the Constitution of the United States of America providing that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws; that said Act and each section thereof, and the Oath and each word, phrase, clause, sentence or other portion thereof, deprives each intervenor of life, liberty, and property without due process of law, and denies to each intervenor the equal protection of the laws, in that countless officers of the state, county, school district, municipality, public agency, public authority, and public district are constitutionally immune under the Constitution of the State of Oklahoma, from the requirements of said House Bill No. 8, which immunity renders the statutory compulsion upon each intervenor to take the Oath a denial [fol. 54] of the equal protection of the laws to each intervenor; and denies to each intervenor the equal protection of the laws in various other respects;

And intervenors further allege, and each intervenor alleges, in reference to his contract of employment, indepen-

oath filed, to clearly set it out; it is so ordered." (C.M. 239, 4th.)

14. Said court erred in concluding and rendering judgment that: "each teacher, professor, and employee who has taken and subscribed to an oath by midnight May 9, 1951, [fol. 33] and filed it with the officer, agency, authority, department, commission, or institution in and for which the person executing the oath or affirmation is employed or appointed or to which said person executing the oath or affirmation is employed or appointed or to which said person is elected, and which oath taken and subscribed to is not the oath provided in Section 2 of the Act, cannot take and subscribe to a new oath, unless an honest mistake or clerical error has been made in the preparation of the oath signed; that such teacher, professor and employee who fails to take and subscribe to the oath or affirmation required in said Act has forfeited his or her right to receive pay; it is so ordered." (C.M. 239, 5th.)

15. Said court erred in concluding and rendering judgment that: "The intervenors, and each of them, did not take and subscribe to the oath as provided in section 2 of the Act and wilfully refused to take that oath and by reason thereof the Board of Regents is enjoined from paying them, and their employment is terminated. It is so ordered." (C.M. 240, 6th.)

16. Said court erred in concluding and rendering judgment that: "the words 'if necessary', following the phrase, 'I will take up arms in the defense of the United States in time of War, or National Emergency, if necessary', means that the Congress of the United States within the powers granted them under the Constitution of the United States and the various selective laws passed by the Congress, will [fol. 34] determine when and if it is necessary for any person taking and subscribing to the oath in this Act to bear arms; that such proviso is constitutional. It is so ordered." (C.M. 240, 7th.)

17. Said court erred in concluding and rendering judgment that: "non-citizens of the United States employed by the State must take and subscribe to the oath as provided in the Act, and that the words, 'if necessary' following the phrase, 'I will take up arms in the defense of the United

States in time of War, or National Emergency, if necessary', as applied to them does not violate any of the constitutional rights guaranteed them under the Fourteenth Amendment, or other Constitutional or statutory provisions of the United States, or the Constitution or any statutory provisions of the State of Oklahoma, nor does it violate any treaty agreement with other nations or between the signers of the United Nations. The Congress of the United States, in various selective service, if any, the nationals of other countries must render, taking into consideration the treaty agreements with each country and between the United Nations. It is so ordered." (C.M. 241, 8th.)

18. Said court erred in concluding and rendering judgment that: "that portion of the said oath which requires the teachers, professors and employees of the defendant Board of Regents, including these intervenors, to state:

> 'I am not affiliated directly or indirectly * * * with any agency, party, organization, association, or group whatever which has been officially determined by the United States Attorney General or other authorized [fol. 35] agency of the United States to be a communist front or subversive organization; * * *'

and to further state:

> 'that within the five (5) years immediately preceding the taking of this oath (or affirmation) I have not been a member * * * of any agency, party, organization, association, or group whatever which has been officially determined by the United States Attorney General or other authorized public agency of the United States to be a communist front or subversive organization,'

are valid provisions of the law. * * * that said provisions are constitutional in all respects and are applicable to any such organization which prior to April 9, 1951, has been officially determined by the United States Attorney General or other authorized agency of the United States to be a communist front or subversive organization, and the words 'officially determined' mean such listed organizations as have been afforded an opportunity to present their case; Joint Anti-Fascist Refugee Committee, Petitioner, v. J.

Howard McGrath, Attorney General of the United States, et al. (decided by the Supreme Court of the United States April 31, 1951), and it was the express intention of the legislature, by the words 'has been' to mean only those organizations found to be subversive prior to the effective date of the Act, to-wit: April 9, 1951, and does not apply to any organization declared to be subversive after April 9, 1951, and the Court concludes that the legislature may adopt by reference any report or lists of the United States Attorney [fol. 36] General or other authorized agency of the United States wherein it has been officially determined that any organization is a communist front or other subversive organization. It is so ordered." (C.M. 241, 242, 243, 9th.)

19. Said court erred in concluding and rendering judgment that: "the legislature had the right, within the 'police power' to enact legislation affecting the vital welfare of the State and Nation, and that Enrolled House Bill No. 8 passed by the Twenty-third Legislature does not impair the obligation of contracts; it is so ordered." (C.M. 243, 10th.)

20. Said court erred in concluding and rendering judgment that: "the court does hereby take judicial notice of the threat to our liberties and way of life, and that prior to the passage of this Act a person could obtain a job in our colleges, universities and public schools without declaring his loyalty to his employer, the people of the State of Oklahoma, and of the stress of the times and the need for protection from our enemies, foreign and domestic, and of the advocacy of persons, groups and organizations to overthrow our government by force and violence; and that the legislature of Oklahoma, in the exercise of its police powers, has wide discretion in determining what is necessary, as an exercise of police power, to protect the general welfare of its people, and so far as constitutional issue is concerned the powers of the State, when otherwise justified, is not diminished because of a private contract which may be [fol. 37] affected. All contractural obligations between the Board of Regents and teachers, professors and employers, including the intervenors, are subject to Enrolled House Bill No. 8 of the Twenty-Third Legislature; it is so ordered. "* * * that in the event the Board of Regents found that an honest mistake has been made in the oath so filed,

in the name, designation of the position held, or any other clerical error, that said error may be corrected by the taking of a new oath." (C.M. 243, 244, 11th)

21. Said court erred in concluding and rendering judgment that: "the injunction should be made permanent in all things as prayed in plaintiffs petition; it is so ordered." (C. M. 244, 12th)

22. Said court erred in concluding and rendering judgment that: "there may be clipped to the original oath a statement of a non-citizen, if he so desires, the following statement:

> 'I further state that I am a citizen, or subject, of ——, and that I have taken the foregoing oath, subject to my allegiance to, and rights and obligations, as a citizen, or subject, of ——.
>
> Dated this — day of —— 1951.'

And upon timely filing thereof, his rights to receive compensation shall not be prejudiced." (C.M. 244, 245, 13th)

23. Said court erred in concluding and rendering judgment that: "In view of the findings and judgment of this [fol. 38] Court, this 21st day of May, 1951, made in this litigation and this hearing, to the effect that non-nationals may be permitted to execute an additional and explanatory statement along with their oath of allegiance, the court now finds and concludes that all non-nationals who have heretofore, because of misunderstanding or honest mistake, have failed, up to this time, to execute the oath in the manner and form as provided herein, together with the explanatory statement, as provided herein, that all such non-nationals may have a reasonable time after the execution of this judgment, this date, by the Court, within which to properly prepare, take and file said oath, not to exceed 10 days; and it is so ordered." (C. M. 245, 14th)

24. Said court erred in concluding and rendering judgment as follows: "It Is Therefore Ordered, Adjudged and Decreed by the Court that the injunction should be made permanent in all things as set forth in the conclusions of law, and that intervenors' petition for mandatory injunction is in all things denied, and costs are assessed against the deffendants and the intervenors." (C. M. 245)

25. Said court erred in rendering judgment for defendants in error (C.M. 235 to 245, inclusive).

Wherefore, plaintiffs in error, Werner C. Baum, Samuel Hunt Lee, Malcolm Correll, Lillian A. Schmoe, and Luella R. Nietz, pray that said judgment and each part thereof so rendered may be reversed, set aside and held for naught, and that a judgment may be rendered in favor of said [fol. 39] plaintiffs in error, and that said plaintiffs in error be restored to all rights that he has lost by the rendition of such judgment and each part thereof, and that judgment be rendered for said plaintiffs in error directing the Board of Regents of the Oklahoma Agricultural Colleges, and A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, directing them to pay to said plaintiffs in error the sums due under the contract between the said Board of Regents and plaintiffs in error up to and including the end of the current fiscal year, and for such other relief as to the Court may seem just.

Werner C. Baum, Samuel Hunt Lee, Malcolm Correll, Lillian A. Schmoe, and Luella R. Nietz, Plaintiffs in error, By Robert J. Emery (Signed), Don Emery (Signed), Their Attorneys.

[fol. 40] IN THE DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

Case No. 125,417

PAUL W. UPDEGRAFF, Plaintiff,

vs.

THE BOARD OF REGENTS OF THE OKLAHOMA AGRICULTURAL COLLEGES, and A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, Defendants

PETITION—Filed May 9, 1951

Comes now the plaintiff and for cause of action against the defendants alleges and states:

1. That he is a tax payer and citizen of the State of Oklahoma.

2. That the defendant, the Board of Regents of the Oklahoma Agricultural Colleges, has charge of all monies appropriated by the State Legislature of the State of Oklahoma and the power and authority to expend all funds appropriated by the legislature or by Congress for said colleges.

3. That A. S. J. Shaw, defendant herein, is the State Treasurer of the State of Oklahoma.

4. That the defendant, Wilburn C. Cartwright, is the State Auditor of the State of Oklahoma.

5. That the 1951 legislature of the State of Oklahoma passed a bill known as the "loyalty oath" wherein it is provided that any person employed by the State of Okla- [fol. 41] homa, before receiving any monies from the State Treasurer, shall subscribe to a "loyalty oath."

6. That the defendant the Board of Regents of the Oklahoma Agricultural Colleges, have in their employ certain teachers, professors, and other employees, some of whom are citizens of the State of Oklahoma and others are visiting professors from other countries and are non-citizens of the United States, who have refused, failed and neglected to subscribe to the oath as provided by law, and the said persons who have failed to subscribe to the oath, on or about the 9th day of May, 1951, will prepare and file a salary claim for the month of May, 1951.

7. That by reason of their failure to subscribe to the said loyalty oath, each employee failing to so subscribe and file the same with the head of their respective institution is not entitled to be paid from state funds for the month of May, 1951. That plaintiff has no adequate remedy at law.

Wherefore plaintiff prays judgment against the defendants, the Board of Regents of the Oklahoma Agricultural Colleges, and A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, perpetually enjoining and restraining them from paying any of the employees of the Oklahoma Agricultural Colleges for the month of May, 1951, or any other month until such period of time as each employee paid has subscribed to the oath as provided in En- [fols. 42-43] rolled House Bill No. 8 passed by the Twenty-third Legislature, and that the defendants hereinabove

named shall be enjoined from paying salaries or reimbursement for expenses incurred by any teacher, proffessor and other employees; and that the defendants herein named or institution, in and for which the person executing the oath or affirmation is employed or appointed or elected, shall be enjoined from accepting after midnight May 9, 1951, any oaths other than the oaths such teachers, professors and other employees may have filed with the proper head or public authority for said institution, provided that the teachers, professors and other employees who are on authorized leave on May 9th, 1951, may take and subscribe said oath or affirmation by midnight June 8, 1951.

(S.) Paul W. Updegraff, Attorney for Plaintiff.

Duly sworn to by Paul W. Updegraff. Jurat omitted in printing.

[fol. 44] In District Court of Oklahoma County

[Title omitted]

Order Granting Intervenors Permission to File Consolidated Petition—Filed May 19, 1951

This matter coming on to be heard this 18th day of May, 1951, one of the regular days of the January Term of the District Court of Oklahoma County, before the Honorable [fol. 45] W. A. Carlile, Judge of said court, upon the intervenors' motion to file a consolidated petition in intervention and cross action, which is to be the petition in intervention and cross action of all intervenors above named, superceding and being in substitution for the separate petitions of each intervenor heretofore filed by permission of this court.

It is, therefore, ordered, adjudged and decreed by this court that leave be granted the above named intervenors to file their consolidated petition in intervention and cross action in substitution for and supersession of the petition in intervention and cross action filed by each of said intervenors heretofore by order of this court; that leave be granted to each intervenor to withdraw his separate petition.

W. A. Carlile, District Judge.

[fol. 46] IN DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

CONSOLIDATED PETITION IN INTERVENTION—Filed May 19, 1951

Comes now Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Malcolm Correll, Lillian A. Schmoe, and Luella R. Nietz (hereinafter called "intervenors", and each of them, having been made a party herein by order of this court, for answer to plaintiff's petition alleges and states:

That each intervenor is a citizen and subject of the United States of America and of the State of Oklahoma, a resident of Payne County, Oklahoma, and is now serving Oklahoma Agricultural and Mechanical College as follows: Intervenor Wieman is Assistant Professor of Philosophy; Intervenor Ziebur is Research Assistant for Research Foundation; [fol. 47] Intervenor Baum is Assistant Professor of Botany; Intervenor Lee is Associate Professor of Chemistry; Intervenor Correll is Professor of Physics and Chairman of Physical Science; Intervenor Schmoe is a Secretary, and Intervenor Nietz is Assistant Professor of Music, each under a valid contract of employment with the defendant Board of Regents and with the Oklahoma Agricultural and Mechanical College, for a term commencing at a time prior to the effective date of an Act enrolled as House Bill No. 8, and passed by the 23rd Oklahoma Legislature; that said contract extends, according to its term, at least to the end of the current fiscal year; that "Part H—Text of Policy Statement," dated April, 1945, pages 5 to 9 inclusive, and adopted by defendant Board of Regents in April, 1946, is a part of said contract of employment; that by the terms thereof each intervenor is entitled to receive, in monthly payments, from funds that are now lawfully available an annual salary as follows: Intervenor Wieman, $3600.00; Intervenor Ziebur, $900.00; Intervenor Baum, $3600.00; Intervenor Lee, $4200.00; Intervenor Correll, $6000.00; Intervenor Schmoe, $1610.00; and Intervenor Nietz, $3000.00; that funds are lawfully available to meet the salary obligations of each of said contracts; that each intervenor has in all things com-

plied with said contract, and has done all things required by law in the performance thereof, and required by law as a condition precedent and as a condition subsequent to the right to receive compensation thereunder; that said contract [fol. 48] does not require intervenor to take any oath of any kind or to do anything mandated by "the oath" hereinafter referred to, or to refrain from doing anything proscribed by said Oath; that each intervenor has heretofore received payments monthly thereunder up to and including the month of April, 1951; that each intervenor is now ready, able and willing to perform, and is now performing, and will continue to perform services thereunder during the term thereof without interference from the defendant Board of Regents, or from any of its authorized agents; that this intervenor is entitled to receive payments thereunder and is entitled to have defendant Board of Regents direct its authorized agent, and to have the defendant, A. S. J. Shaw, as State Treasurer of the State of Oklahoma, and to the defendant, Wilburn C. Cartwright as State Auditor of the State of Oklahoma, to do any and all things lawfully necessary to be done to effect payment thereunder to this intervenor; and to each intervenor;

That each intervenor is not a member of any organization, political or otherwise, that advocates, that he has not and will not advocate, the overthrow of the Government of the United States of America or of the State of Oklahoma, by force or violence, or unlawful means;

That an Act (hereinafter referred to as "the Act") passed by the 23rd Oklahoma Legislature, enrolled as House Bill No. 8, and approved by the Governor of the State of [fol. 49] Oklahoma on the 9th day of April, 1951, is unconstitutional and void as to each intervenor in that it violates each intervenor's rights protected by the Constitution of the State of Oklahoma, and violates each intervenor's rights protected by the Constitution of the United States of America in the following ways and in the following particulars:

That the Act, and each section thereof, to-wit: Section 1 requiring each intervenor to take the Oath set forth in Section 2 (hereinafter called "the Oath"), and declaring a forfeiture of office or employment for failure to take the

Oath; Section 2 providing for the Oath; Section 3 constituting a prescription for filing the Oath; Section 4 declaring who may take the Oath; Section 5 prohibiting compensation and reimbursement for expenses to each intervenor and prohibiting the inclusion of his name on the public payrolls unless he takes and files the Oath; Section 6 denoting the taking of a false oath as the crime of perjury; Section 7 declaring the Oath taker to be guilty of a felony if, after taking the Oath, he is guilty of certain conduct proscribed by the Oath; Section 9 rendering each cognizable part of the Oath severable; and Section 10 declaring the existence of an emergency, are unconstitutional and void as to each intervenor because the Act and each section thereof, the Oath and each word, phrase, clause, sentence, or other portion thereof, violates the following provisions of the Constitution of the State of Oklahoma:

(a) Article VI, Sec. 31a, reposing in the constitutionally created Board of Regents the exclusive power to govern [fol. 50] Oklahoma Agricultural and Mechanical College; that the Act and each section thereof, the Oath and each word, phrase, clause, sentence, or other portion thereof, constitutes a purported attempt to govern said college;

(b) Article II, Section 15, prohibiting the passing of any bill of attainder, ex post facto law, or law impairing the obligations of contracts; that the Act and each section thereof, the Oath and each word, phrase, clause, sentence, or other portion thereof, constitutes a bill of attainder and ex post facto law, and a law impairing the obligation of contracts;

(c) Article II, Section 7, providing that no person shall be deprived of life, liberty or property without due process of law; that said Act and each section thereof, the Oath and each word, phrase, clause, sentence or other portion thereof, constitutes the taking of life, liberty and property without due process of law;

(d) Article V, Section 1, providing that the legislative authority of this State shall be vested in a legislature; that the Act and each section thereof, the Oath and each word, phrase, clause, sentence or other portion thereof, constitutes an unlawful delegation of the legislative power of the State

dently thereof and as a part and parcel thereof, that, by the uniform custom, policy and practice of the said defendants, Board of Regents of the Oklahoma Agricultural Colleges, and by the implied understanding and agreement between each intervenor and the said defendants, it is contemplated that each intervenor will be retained in the service of said defendants and his employment will be renewed from time to time at the expiration of each term thereof so long as there is need of the services rendered by each intervenor at the said Oklahoma Agricultural and Mechanical College, and so long as each intervenor renders efficient and faithful service and demeans himself in a sober, honest and upright manner; that the said Act, and the requirements thereof, if interpreted and applied in accordance with plaintiff's allegations herein, constitutes an unconstitutional interference in respect of each claim of unconstitutionality hereinabove alleged, and constitute an unconstitutional interference with the right of defendant Board of Regents to continue said custom, policy and practice in the exercise of their constitutional authority to govern and manage the said College, and of each intervenor to have the said Board of Regents free to continue said custom, policy and practice and, in pursuance [fol. 55] thereof, to continue each intervenor in his present position and employment without regard to considerations other than the proper and efficient functioning of said College as an educational institution and for the accomplishment of the functions for which it was created; that each intervenor is entitled to have the said defendant Board of Regents free to continue said custom, policy and practice and, in the exercise of their legal and constitutional discretion, free to continue and to renew his said employment, without hindrance or control by the said unconstitutional provisions of said statute and without interference by the refusal of said other defendants, A. S. J. Shaw and Wilburn Cartwright, to perform their officials duties in respect to the employment of each intervenor so long as said employment shall be continued by said defendant Board of Regents.

That intervenor has not taken the Oath; that each intervenor, except Ziebur and Wieman, conscientiously and sincerely believes that war and the use of force between nations is contrary to the Will of God, and is forbidden by divine

law, and that in obedience to these principles, and as a matter of religious faith and obligation, each intervenor, except Ziebur and Wieman, cannot and will not, because of his aforesaid religious convictions, bear arms against his fellowman;

That, because of the constitutional defects hereinabove [fol. 56] enumerated, the requirement of said Oath, and the statutory provisions designed to implement and enforce it, are inapplicable and ineffective as to so many state officers and employees as to render unattainable the manifest legislative intent, specifically set out in the title to said Act, to establish the Oath and compliance with the Act as a uniformly effective and uniformly binding obligation to be exacted from all state officers and employees, wherefore the provisions as to severability contained in Section 9 of the Act are without meaning, force or effect, and are unenforcible and void so that the Oath and all other provisions of said Act cannot be imposed upon or made effective against any state officer or employee and particularly not against each intervenor;

Wherefore, premises considered, intervenors, Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Malcolm Correll, Lillian A. Schmoe, and Luella R. Nietz, and each of them, pray judgment against the plaintiff denying plaintiff each and every form of relief prayed [fol. 57] for in his petition; that the temporary restraining order granted against the defendants, the Board of Regents of the Oklahoma Agricultural Colleges, A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, be dissolved; that a temporary injunction and permanent injunction against each of said defendants be denied; that each intervenor have all other relief, including any extraordinary writs necessary to protect his constitutional rights hereinabove alleged to be violated.

Emery & Emery, by Robert J. Emery, Don Emery,
Attorneys for Intervenors.

Duly sworn to by Robert M. Wieman et al. Jurats omitted in printing.

[fol. 58] IN DISTRICT COURT OF OKLAHOMA COUNTY

CROSS PETITION OF INTERVENORS, ROBERT M. WIEMAN, NANCY KENT ZIEBUR, WERNER C. BAUM, SAMUEL HUNT LEE, MALCOLM CORRELL, LILLIAN A. SCHMOE, AND LUELLA R. NIETZ —May 19, 1951

Comes now Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Malcolm Correll, Lillian A. Schmoe, and Luella R. Nietz, intervenors herein, and each of them, for his cross petition against each of the defendants, the Board of Regents of the Oklahoma Agricultural Colleges, A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, adopts and repleads each and every allegation hereinabove set forth in intervenors' petition in intervention, to the same effect as though it were fully and completely set forth herein.

Intervenors, and each of them, further allege that, by the uniform custom, policy and practice of the said defendants, Board of Regents of the Oklahoma Agricultural Colleges, and by the implied understanding and agreement between each intervenor and said defendants, it is contemplated that each intervenor will be retained in the service of said defendants and his employment will be renewed from time to time at the expiration of each term thereof so long as there is need of the services rendered by each intervenor at the said Oklahoma Agricultural and Mechanical College, and so long as each intervenor renders efficient and faithful service and demeans himself in a sober, honest and upright manner; [fol. 59] that the said Act, and the requirements thereof, if interpreted and applied in accordance with plaintiff's allegations herein constitute an unconstitutional interference with the right of defendant Board of Regents to continue said custom, policy and practice in the exercise of their constitutional authority to govern and manage the said College, and of each intervenor to have the said Board of Regents free to continue said custom, policy and practice and, in pursuance thereof, to continue each intervenor in his present position and employment without regard to considerations other than the proper and efficient functioning of said College as an educational institution and for the

accomplishment of the functions for which it was created; that each intervenor is entitled to have the said defendant Board of Regents free to continue said custom, policy and practice and, in the exercise of their legal and constitutional discretion, free to continue and to renew his said employment, without hindrance or control by the said unconstitutional provisions of said statute and without interference by the refusal of said other defendants, A. S. J. Shaw and Wilburn C. Cartwright, to perform their official duties in respect to the employment of each intervenor so long as said employment shall be continued by said defendant Board of Regents.

Wherefore, premises considered, said intervenors, Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Malcolm Correll, Lillian A. Schmoe, and Luella R. Nietz, and each of them, being otherwise remediless, praus this Honorable Court to issue a writ of mandamus, or if not entitled to mandamus, then a mandatory injunction, requiring and compelling said defendants, and each of them the Board of Regents of the Oklahoma Agricultural Colleges, A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, to comply with its or his, statutory duty in the premises without regard to the provisions of House [fol. 60] Bill No. 8, passed by the 23rd Legislature of the State of Oklahoma, to certify each intervenor's name on the proper public payrolls, and to do all things necessary to effect payment to each intervenor under his contract with said defendant, the Board of Regents of the Oklahoma Agricultural Colleges, which is the Board of Regents for Oklahoma Agricultural and Mechanical College, and for such other and further relief as may be just and proper in the premises.

Emery & Emery, by Robert J. Emery, Don Emery,
Attorneys for Intervenors.

Duly sworn to by Robert M. Wieman et al. Jurats omitted in printing.

[fol. 61] IN DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

ANSWER—Filed May 16, 1951

Come now the above-named defendants, and each of them, and in answer to the petition of plaintiff herein and in response to the "Temporary Restraining Order" issued in this cause, allege and state:

1. That the material allegations of fact set forth in the petition are not sufficient to constitute a cause of action in favor of plaintiff and against defendants.

2. Defendants admit the material allegations of fact set forth in Paragraphs 1 to 6 of plaintiff's petition.

3. That the teachers, professors and other employees referred to in Paragraph 6 of the petition were employed by the defendant, Board of Regents for the Oklahoma Agricultural and Mechanical Colleges, prior to April 9, 1951 (the effective date of the act mentioned in Paragraph 5 of the petition), to teach and otherwise serve in said colleges on a contract basis during the fiscal year ending June 30, [fol. 62] 1951, and hence, by virtue of that part of Section 15, Article 2 of the Oklahoma Constitution which provides that no law

> "impairing the obligation of contracts shall ever be passed,"

the provisions of said Act (House Bill No. 8 of the Twenty-third Oklahoma Legislature) are not applicable to said contracts or to the May, 1951 salary claims mentioned in said petition, and therefore the defendant board, treasurer and auditor should not be enjoined from approving and paying the claims referred to in Paragraph 6 of the petition.

4. That the teachers, professors and other employees referred to in Paragraph 6 of the petition have not been, and cannot lawfully be, employed by the defendant board to teach or otherwise serve in the colleges mentioned in the petition during the fiscal year ending June 30, 1952 or during any succeeding fiscal year, except after the beginning of each such year, hence the prayer for injunctive relief set forth in the petition as to salary claims of said teachers,

professors and other employees for any such future fiscal year, is premature and not susceptible of fulfillment.

Wherefore, premises considered, defendants respectfully ask the court to deny plaintiff the injunctive relief prayed for by him.

Mac Q. Williamson, Attorney General of Oklahoma;
Fred Hansen, First Assistant Attorney General,
Attorneys for Defendants.

Duly sworn to by Harold Hutton. Jurat omitted in printing.

[fol. 63] [File endorsement omitted.]

[fol. 64] IN DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

ANSWER TO CROSS-PETITION OF INTERVENORS—Filed May 16, 1951

Come now the above named defendants, and each of them, and in answer to each of the separate cross petitions of the intervenors, Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Lee Hunt, Jr., Malcolm Correll, Lillian A. Schmoe and Luella Nietz, in each of which cross-petitions a writ of mandamus is sought against defendants

> "to certify this intervenor's name on the proper public payrolls, and to do all things necessary to effect payment to this intervenor under his contract with said defendant, the Board of Regents of the Oklahoma Agricultural Colleges, which is the Board of Regents for Oklahoma Agricultural and Mechanical College, and for such other and further relief as may be just and proper in the premises."

and allege and state:

1. That the material allegations of fact set forth in the cross-petition of intervenor are not sufficient to constitute a cause of action in favor of intervenor and against defendants.

[fol. 65] 2. That it is the intention of defendants, and each of them (unless enjoined by this court), to certify, approve and pay the teachers, professors and other employees referred to in Paragraph 6 of the petition of the plaintiff, Paul W. Updegraff (also referred to in Paragraph 3 of defendants' answer to said petition), including intervenor, the compensation due thereto under the contracts referred to in said paragraph (including the above-mentioned contract of intervenor) up to and including June 30, 1951.

Wherefore, premises considered, defendants respectfully ask the court to deny intervenors the issuance of the writ of mandamus prayed for by them.

Mac Q. Williamson, Attorney General of Oklahoma.
Fred Hansen, First Assistant Attorney General,
Attorneys for Defendants.

Duly sworn to by Harold Hutton. Jurat omitted in printing.

[fol. 66] [File endorsement omitted.]

[fol. 67] IN DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

ANSWER TO PLEA OF INTERVENTION—Filed May 19, 1951

Comes now the plaintiff and for answer to the plea of intervention filed herein by the intervenors denies each and every material allegation set forth in the plea of intervention except those hereinafter specifically admitted.

1. Plaintiff states that it is not within his knowledge as to the various reasons given by the various intervenors as to why they did not subscribe to the oath as provided by Enrolled House Bill No. 8 of the Twenty-third Legislature, but specifically denies that the said Act is unconstitutional or violates any of the constitutional rights of the intervenors as provided in the Constitution of the State of Oklahoma and by the Constitution of the United States.

2. Plaintiff specifically denies that Article 6, Section 31(a) creating the Board of Regents to govern Oklahoma

Agricultural and Mechanical Colleges prohibits the legislature from passing Enrolled House Bill No. 8 of the Twenty-third Legislature, and says that said Bill specifically applies [fol. 68] to all teachers, professors and other employees of the institutions under the supervisions and control of the Board of Regents of the Oklahoma Agricultural and Mechanical Colleges for the reason that all salaries or other funds disbursed are being paid from the State treasury of Oklahoma.

3. Plaintiff specifically denies that the Act is unconstitutional and void or impairs any contract of any person holding "tenure" or any other valid contract of employment made by the defendant Board of Regents with the intervenors or any teacher, professor, or other employee.

4. Plaintiff specifically denies that the said Bill violates Article 2, Section 15; Article 2, Section 7; Article 5, Section 1; Article 1, Section 2; Article 2, Section 57; Article 4, all of the Constitution of the State of Oklahoma; Article 1, Section 8; Article 1, Section 10; Article 6, Section 1; the Fourteenth Amendment, all of the Constitution of the United States; any treaty agreements made by the authority of the United States including the treaty affecting the membership of the United States and United Nations organization; or of any other provision of the Constitution of the State of Oklahoma or of the United States.

Wherefore plaintiff prays that the intervenors and each of them shall be denied each and every form of relief prayed for in the petition of intervention (or cross petition of intervenors) and that a permanent injunction be granted against the defendants, the Board of Regents of the Oklahoma Agricultural and Mechanical Colleges, A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, and that the permanent injunction be granted in all things as prayed for in the petition of this plaintiff.

(S.) Paul W. Updegraff, Plaintiff.

Duly sworn to by Paul W. Updegraff. Jurat omitted in printing.

[fol. 69] [File endorsement omitted.]

[fol. 70] IN DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

REPLY—Filed May 19, 1951

Comes now the plaintiff and for reply to the answer of the defendants and each of them filed herein, and denies each and every material allegation set forth in the answer except those that may be hereinafter specifically admitted.

Plaintiff specifically denies that Enrolled House Bill No. 8 passed by the Twenty-third Legislature impairs the obligations of contracts existing between the Board of Regents for the Oklahoma Agricultural and Mechanical College and teachers, professors, and other employees, and that said Act is applicable to all contracts and to the May, 1951, salary claims, and therefore the defendant Board of Regents, State Treasurer, and State Auditor should be enjoined from approving and paying the said claims.

Plaintiff says that the Act as passed by the legislature is constitutional and valid in all things.

Plaintiff specifically denies that other employees, except teachers and professors, are employed on a basis of the [fol. 71] school term and says they are employed only on the basis of month to month, do not hold any written or oral contract, and may be discharged at any time by the defendant Board of Regents for the Oklahoma Agricultural and Mechanical College or the President of the institution or the heads of departments under whose supervision the employee may work.

Plaintiff specifically denies that the prayer for injunctive relief set forth in the petition as to salary claims for the said teachers, professors and other employees for any future fiscal year is premature, and says that unless the defendants and each of them are enjoined that monies will be paid from the state treasury in direct violation of law.

Wherefore, premises considered, plaintiff respectfully asks this court to grant him permanent injunctive relief as prayed for in his petition.

(S.) Paul W. Updegraff, Plaintiff.

Duly sworn to by Paul W. Updegraff. Jurat omitted in printing.

[fol. 72] [File endorsement omitted.]

[fol. 73] IN DISTRICT COURT OF OKLAHOMA COUNTY

Transcript of hearing to make permanent the temporary injunction—May 19, 1951

Be It Remembered, that this cause came regularly on for hearing on this the 19th day of May, 1951, before the Honorable W. A. Carlile, District Judge in and for Oklahoma County, Oklahoma, upon a Hearing To Make Permanent the temporary injunction heretofore issued herein;

And the plaintiff, defendants and Intervenors being present by counsel, and announcing ready to proceed with said hearing;

Thereupon the following stipulations are had, evidence taken, exhibits introduced and proceedings had and recorded, to-wit:

[fol. 74] OFFERS IN EVIDENCE

The Court: All right, gentlemen, you may proceed.

Mr. Emery: With agreement of counsel and, of course, permission of the Court, I offer in evidence what have been marked by the reporter as Intervenor's exhibits "A", "B" and "C", and ask leave to withdraw the originals and substitute photostatic copies. (Exhibits at end of Evidence)

Mr. Updegraff: That is agreeable.

The Court: All right. They will be admitted and you may substitute photostatic copies for the record.

(Said exhibits appearing in this record at beginning page 112) (Ex. A 113: Ex. B 130: Ex. C 133:)

Mr. Emery: May the record show that at the time of the original appointment of the intervenors, Baum and Wieman—Baum's appointment, September 1, 1948—that a written memorandum or letter was written by the A & M College to each of these gentlemen, evidencing their appointment. Now, they don't have it in their files, but I understand that Mr. Albright, who is here, has a copy and knows that to be so.

Mr. Updegraff: I will stipulate this way: That these gentlemen, if on the witness stand, would so testify. I am waiv-

ing the question of competency and stipulating that they would so testify.

Mr. Emery: I would like to make a correction. Intervenor, Wieman's original appointment was September 1, 1947.

[fol. 75] The Court: All right; sir.

Mr. Emery: Intervenors would like to offer in evidence the stipulation filed by the Attorney General.

Mr. Updegraff: No objections.

The Court: It is admitted.

Mr. Emery: There is an exhibit on the declaration of policy attached. If the Court please, Intervenors would like to offer in evidence what has been marked as Intervenor's exhibit "D", which is a certification by the executive secretary of the defendant Board of Regents as to the appointment and salary and history of the intervenors.

Mr. Updergraff: No objections.

The Court: Then it is admitted.

(Said exhibit "D" appearing in this record at page 155).
(Exhibit D appears beginning page)

Mr. Emery: May it be admitted that the declarations in consolidated petition for intervention of each intervenor, as to citizenship and residence, is correct?

Mr. Updegraff: That may be admitted. I would also like to have you state in the record the place of residence of the national from Iran, here on scholarship.

Mr. Emery: All right. His name and address is Aboulghassem Zirakzadek, 6 Farvardin, Teheran, Iran. He is a citizen of Iran and came to the United States in January, 1948. He has not returned to Iran since coming to the [fol. 76] United States in 1948. He has been over here for two years on associate fellowship by invitation from A & M.

May it be admitted by the Attorney General and counsel for the plaintiff, that each of the intervenors do not advocate and do not belong to any organizations that advocate the overthrow — the government of the United States or the State of Oklahoma by force and violence?

Mr. Updegraff: No, I won't say that. I will say that each of them, if here to testify, would so testify.

Mr. Emery: Then, that their testimony as to the facts alleged in their consolidated petition in intervention may be considered as testimony in this case, as to all facts so alleged, without any challenge as to its competency?

Mr. Updegraff: That's right.

Mr. Hanson: That is satisfactory.

Mr. Emery: The intervenors now offer in evidence the consolidated petition in intervention, with the understanding that it will not encumber the case-made.

The Court: It is already a part of the record, anyway.

Mr. Emery: I would like the record to show, even though it is a part of the transcript, that I offered it in evidence.

The Court: Let the record show that the offer was made, and the consolidated petition will be admitted in evidence.

(The consolidated petition in intervention appears at page 33 of this case-made and its adoption by Aboulghassem Zirakzadek appears at page 247A½ of this case-made).

Mr. Updegraff: I would like the record to show that all [fol. 77] the papers heretofore filed have been withdrawn and re-filed after his petition in intervention was filed.

The Court: Let the record so show.

Mr. Hanson: If the Court please, we have admitted, with objections, certain and various matters presented, but in doing so, we would like to reserve out right to challenge the materiality.

The Court: You will be given that right.

Mr. Emery: May it be admitted that the defendant Board of Regents, up to this time, has taken no action in reference to the oath contained in House Bill No. 8 of the Twenty-third Legislature?

Mr. Hanson: It may be admitted.

Mr. Updegraff: I will admit that no action has been taken. I assume that there has been no action taken, according to the statement of the secretary of the Board.

Mr. Emery: All right.

The Court: If I understand you gentlemen correctly, there is no contention that any of these parties are Communists?

Mr. Updegraff: No. We don't say that at all.

Mr. Emery: There is no contention as to that.

The Court: And, they have refused to sign this oath because they are unwilling to bear arms in defense of the United States.

[fol. 78] Mr. Emery: That is one of the grounds, but there are several other grounds. The issues are much deeper than that.

Mr. Updegraff: I don't stipulate that none of these people are Communists. I stipulate only that if they were put on the witness stand they would so testify, and their testimony to that effect be considered as evidence in this case.

Mr. Emery: We offer in evidence what has been marked as Intervenor's exhibit "E".

Mr. Updegraff: No objections.

The Court: It will be admitted.

(Said exhibit appearing in this record, beginning at page 148).

Mr. Updegraff: It is hereby stipulated and agreed by and between the parties that the intervenor, Aboulghassem Zirakzadek, is permitted to intervene in said cause of action and the intervenor's petition may be amended to so state.

It is stipulated and agreed by and between the parties that Nancy Kent Siebur failed to file the oath.

[fol. 79] In District Court of Oklahoma County

[Title omitted]

Stipulation—Filed May 19, 1951

It is hereby stipulated and agreed by and between the plaintiff, defendants and intervenors in the above cause that the plaintiff is a taxpayer and citizen of the state of Oklahoma; that the teachers and professors referred to [fol. 80] in the pleadings herein were employed by the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges prior to April 9, 1951 to teach in the colleges referred to in the pleadings for and during the school year ending on or prior to June 30, 1951; that the other employees referred to in the pleadings were employed by

the defendant, Board of Regents, prior to April 9, 1951, to perform services in the colleges referred to in the pleadings for prescribed periods exceeding thirty (30) days, but not necessarily for the entire school year 1950-51; that said employments were made by virtue of recommendations of employment by the Presidents of said colleges to the defendant, Board of Regents, which recommendations were approved or ratified by the Board after the beginning of the fiscal year ending June 30, 1951, after which said teachers, professors and employees entered into the duties of their respective employments, all of which is reflected in the official minutes of the board; that no written contracts of employment were executed by said teachers, professors and employees with said Board of Regents, except as the above procedure may constitute the execution of such contracts; that the above procedure may constitute the execution of such contracts; that the procedure above outlined is in accord with the customary and traditional practice of said board in effecting the employment of teachers, professor- and employees in said colleges; that funds are now law- [fol. 81] fully available to pay the salaries of said teachers, professors and employees during the fiscal year ending June 30, 1951; that said teachers, professors and employees, including intervenors, have in all things complied with their respective employments and have done all things required by law in the performance thereof as a condition precedent and as a condition subsequent to the right to receive compensation therefor, except that same have not taken the oath set forth in Section 2, of house Bill No. 8 of the Twenty-third Oklahoma Legislature; that said teachers, professors and employees, including intervenors, have heretofore received payment under their respective employments up to and including the month of April, 1951, and are now ready, willing and able to perform, are now performing and will continue to perform services under their respective employments; and that the intervenors, Baum, Correll, Hunt, Schmoe and Nietz hold religious convictions against bearing arms against their fellow men.

It is further stipulated that "Part II, Text of Policy Statement," attached hereto as a part of this stipulation, constitutes the present policy, in so far as it affects Okla-

homa Agricultural and Mechanical Colleges only, adopted by the defendant board April 6, 1945, by the procedure reflected upon the official minutes of said board, as follows:

> "It was moved by Mr. Stuart, seconded by Mr. Harber that Dr. Bennett's recommendations for adoption [fol. 82] of policy statement of the President's committee dated April 10, 1945, consisting of pages 5 to 11, inclusive, be approved, as submitted, with one exception, viz., that salaries of Deans are to be from $4,000.00 to $7,500.00 instead of $4,000.00 to $6,000.00. Approval be subject to all limitations of the budget.
>
> "Motion carried."

It is also stipulated that A. S. J. Shaw is the duly elected, qualified and acting State Treasurer of Oklahoma; that Wilburn C. Cartwright is the duly elected, qualified and acting State Auditor of Oklahoma; that the compensation of the teachers, professors and employees referred to in the pleadings is largely paid from state funds; that attached to this stipulation is a list of teachers, professors and employees, separately listed as to colleges, of the colleges referred to in the pleadings who had not on or before midnight May 9, 1951 taken and subscribed to the oath as set forth in Section 2 of said House Bill; that included in said list are teachers, professors and employees who are nationals or citizens of other countries and teachers, professors and employees who have religious scruples against [fol. 83] bearing arms; and that any of the parties hereto reserve the right to introduce competent evidence at the trial of this cause with this stipulation.

Dated this 17th day of May, 1951.

Paul W. Updegraff, Attorney for Plaintiff; Mac Q. Williamson, Attorney General of Oklahoma; Fred Hansen, First Assistant Attorney General, Attorneys for Defendants.

Emery & Emery, by Robert J. Emery; Don Emery, Attorneys for Intervenors.

[fol. 84] IN DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

INTERVENORS' MOTION FOR NEW TRIAL—Filed May 22, 1951

Comes now Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Malcolm Correll, Lillian A. Schmoe, Luella R. Nietz, and Aboulghassen Zirakzadek, intervenors herein, and each of them, and
[fol. 85] moves the court to vacate and set aside the judgment rendered herein on the 21st day of May, 1951, said judgment modifying the judgment rendered herein on the 21st day of May, 1951, said judgment modifying the judgment of this court rendered herein on May 19, 1951, the intervenors, and each of them, being aggrieved thereby, and to grant a new trial for the following causes which affect materially the substantial rights of the intervenors and each of them:

1st

The court erred in its findings of fact, because said findings of fact, and each of them, are contrary to law.

2nd

The court erred in its conclusions of law numbered First to Fourteenth, inclusive, and each of such conclusions, because they, and each of them, are contrary to law, for the reason that such conclusions of law, and each of them, violate the rights of intervenors, and each of them, protected by the following provisions of the Constitution of the State of Oklahoma, and for the reason that such conclusions, and each of them, violate the following provisions of the Constitution of the State of Oklahoma:

(a) Article VI, Sec. 31a; (b) Article II, Sec. 15;
[fol. 86] (c) Article II, Sec. 7; (d) Article V, Sec. 11; (e) Article I, Sec. 2; (f) Article V, Sec. 57; and (h) Article IV, in that House Bill No. 8, enacted by the 23rd Oklahoma Legislature, and signed by the Governor of the State of Oklahoma, April 9, 1951, each section thereof, the Oath set forth in Section 2 thereof, and each word, phrase, clause, sentence or other portion of said Oath, violates each and all of said

constitutional provisions hereinabove referred to, and violates the rights of intervenors, and each of them, protected by each of said constitutional provisions.

3rd

The court erred in its conclusions of law numbered First to Fourteenth, inclusive, and each of such conclusions, for the reason that such conclusions of law, and each of them, violate the rights of intervenors, and each of them, protected by the following provisions of the Constitution of the United States, and for the reason that such conclusions, and each of them, violate the following provisions of the Constitution of the United States:

(a) Article I, Section 8, providing that Congress shall have the power to raise and support armies, to provide and maintain a navy, to make rules for the government and the regulation of the land and naval forces; to organize, arm and discipline the militia; [fol. 87] That the Congress of the United States of America, prior to the effective date of the Act, did not consent that the State of Oklahoma exercise any of said powers constitutionally delegated to the Congress but did enact a comprehensive, complete and fully integrated legislative scheme in the exercise of each and all of such powers; that said Act and each section thereof, and the Oath and each word, phrase, clause, sentence or other portion thereof, constitutes a purported attempt to exercise such powers so delegated and now exercised by the Congress of the United States of America;

(b) Article I, Section 10, providing that no state shall impair the obligations of contracts; that said Act and each section thereof, and the Oath and each word, phrase, clause, sentence or other portions thereof, impairs the obligation of each intervenor's contract;

(c) Article VI, Section 1, providing that the Constitution and laws of the United States of America which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States of America shall be the

supreme law of the land; that said Act and each section thereof, and the Oath and each word, phrase, clause, sentence or other portion thereof, violates the Constitution and laws of the United States of America [fol. 88] in the particulars heretofore and hereafter enumerated, and is in violation of treaties made under the authority of the United States of America, including the treaty effecting the membership of the United States of America in the United Nations Organization;

(d) The Fourteenth Amendment of the Constitution of the United States of America providing that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,

in that House Bill No. 8, enacted by the 23rd Oklahoma Legislature, and signed by the Governor of the State of Oklahoma, April 9, 1951, each section thereof, the Oath set forth in section 2 thereof, and each word, phrase, clause, sentence or other portion of said Oath, violates each and all of said constitutional provisions hereinabove referred to, and violates the rights of intervenors, and each of them, protected by each of said constitutional provisions.

4th

The court erred in rendering a judgment based upon such conclusions, and each of them, numbered First to Fourteen, inclusive, for the reason that such judgment in that respect violates the Constitution of the State of Oklahoma and the Constitution of the United States in the respects hereinabove enumerated, and violates the constitutional [fol. 89] rights of intervenors, and each of them, protected by the constitutional provisions of the State of Oklahoma and of the United States as hereinabove enumerated.

5th

The court erred in its Fifth conclusion of law denying Intervenors, and each of them, the right to receive compensation from said defendant Board of Regents for the reason that such finding in that respect violates the Constitu-

tion of the State of Oklahoma and the Constitution of the United States in the respects hereinabove enumerated, and violates the constitutional rights of intervenors, and each of them, protected by the constitutional provisions of the State of Oklahoma and of the United States as hereinabove enumerated.

6th

The court erred in its Sixth conclusion of law terminating the employment of the intervenors, and each of them, for the reason that such finding in that respect violates the Constitution of the State of Oklahoma and the Constitution of the United States in the respects hereinabove enumerated, and violates the constitutional rights of intervenors, and each of them, protected by the constitutional provisions of the State of Oklahoma and of the United States as hereinabove enumerated.

[fol. 90]

7th

The court erred in rendering judgment granting plaintiff a permanent injunction as prayed for in plaintiff's petition.

8th

The court erred in denying to intervenors, and to each of them, the mandatory injunction prayed for by each of the intervenors in their consolidated petition in intervention.

9th

That the court erred in the respects set forth in paragraphs Seventh and Eighth above for the reason that the court's judgment in each of such respects has no authority in law and violates the Constitution of the State of Oklahoma and the Constitution of the United States in the respects and for the reasons hereinabove enumerated.

10th

The court erred in the conclusion of law and in rendering judgment to the effect that the employment of intervenors, and each of them, with the defendant Board of Regents is terminated because conclusion and judgment predicated

thereupon is not warranted in law upon the basis of any of the pleadings filed herein or upon the basis of the plaintiff's prayer for relief.

[fol. 91]

11th

The court erred in denying to intervenors, and each of them, the right to file a motion requesting findings of fact and conclusions of law for the reason that such denial violates the Constitution of the State of Oklahoma and the Constitution of the United States in the respect hereinabove enumerated and for the reasons heretofore stated.

12th

The court erred in rendering judgment granting plaintiff a permanent injunction because the same is contrary to law.

13th

The court erred in denying to intervenors, and each of them, a mandatory injunction as prayed for in their consolidated cross action because such denial is contrary to law.

14th

The court erred in rendering a judgment predicated upon said findings of fact, and each of them, and conclusions of law, and each of them, because such rendition is contrary to law.

[fol. 92]

15th

The court erred in granting a permanent injunction enjoining defendants and each of them from making payments of compensation lawfully due intervenors, and each of them, without requiring plaintiff to give bond because the granting of such permanent injunction under such circumstances is contrary to law.

16th

The court erred as to intervenor Aboulghassen Zirakzadek in failing to provide in the court's eighth conclusion of law, and in failing to provide in the judgment, an opportunity for said intervenor to take the oath as modified or as per-

mitted by the court in the judgment, and the modified judgment, rendered herein.

Wherefore, premises considered, the intervenors herein, Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Malcolm Correll, Lillian A. Schmoe, Luella R. Nietz, and Aboulghassem Zirakzadek, and each of them, pray the court to grant him, or her, a new trial in this cause, and for all other relief to which the intervenors and each of them may be entitled.

Emery & Emery, Attorneys for Intervenors, by Robert J. Emery. Don Emery.

[fol. 93] [File endorsement omitted.]

[fol. 94] IN DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

ORDER OVERRULING MOTION OF INTERVENORS, AND EACH OF THEM, FOR A NEW TRIAL—Filed May 22, 1951

On this 22nd day of May, 1951, there came on for hearing [fol. 95] the motion of the intervenors, herein, and each of them, for a new trial, filed May 21, 1951, and the motion for a new trial filed by intervenors, and each of them, on May 22, 1951, plaintiff being present by his attorney, Paul W. Updegraff, and the defendants being present by their attorneys, Mac Q. Williamson, Attorney General of the State of Oklahoma, and Fred Hansen, Assistant Attorney General of the State of Oklahoma; and the Court having heard the arguments of counsel, and being fully advised, upon consideration finds that the said motions for a new trial, and each of them, should be overruled.

It Is, Therefore, Ordered and Adjudged that the motions of the intervenors, and each of them, for a new trial filed respectively on May 21, 1951, and May 22, 1951, be and the same are hereby overruled, to which rulings of the court, and each of them, the Intervenors, and each of them, then and there excepted, and gave notice in open court of his or her

intention to appeal to the Supreme Court of the State of Oklahoma.

And said intervenors, and each of them, praying an appeal to the Supreme Court, and an extension of time within which to make and serve case-made, it is ordered that fifteen (15) days from this date be granted said intervenors, and each of them, to make and serve case-made, plaintiff and each of said defendants to have three (3) days thereafter to [fol. 96] suggest amendments, same to be settled on three (3) days' notice in writing by any party to this action.

W. A. Carlile, District Judge.

O. K.: D. E.

[File endorsement omitted.]

[fol. 97] In District Court of Oklahoma County

[Title omitted]

Journal Entry of Judgment—Filed May 28, 1951

Be It Remembered that on the 19th day of May, 1951, the above entitled case came on for hearing. The plaintiff appeared in person and the defendants, Board of Regents, the State Treasurer, and State Auditor, appeared by Mac Q. Williamson, Attorney General of the State of Oklahoma, and Fred Hansen, First Assistant Attorney General of the State of Oklahoma, and the Intervenors, Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Malcolm Correll, Lillian A. Schnoe, Luella R. Nietz, and Aboulhassem Zirakzadek, appeared in person and by counsel, Don Emery and Robert J. Emery.

[fol. 98] All parties thereupon announced ready for trial, and the intervenors requested and received permission to file their plea in intervention. The plaintiff thereupon filed a motion to strike the cross petition of the intervenors instanter against the Board of Regents, et al, which motion was overruled and exceptions allowed plaintiff; the plaintiff thereupon requested and received permission to file instanter a demurrer to the interpleaders' action for mandamus and cross petition, which motion was overruled and excep-

tions allowed plaintiff; the plaintiff thereupon requested and received permission to file instanter a reply to the answer of the defendants, Board of Regents, et al, and also an answer to the intervenors' plea of intervention. Thereupon Aboulhassem Zirakzadek requested and was granted permission to become a party to the consolidated petition of intervention, which permission was granted with the understanding that Mr. Emery would prepare and file an amendment to his consolidated petition of intervention and cross petition, and the same was ordered filed.

Thereupon the plaintiff requested and was granted permission to withdraw all of his pleadings heretofore filed and file them in sequence with the same force and effect as if they were specifically refiled herein, after the plea of intervention of Aboulhassem Zirakzadek, and the orders heretofore made concerning the said motions and exceptions [fol. 99] to ruling be and remain the same.

All parties thereupon again announced they were ready to proceed with the hearing, and the stipulations were thereupon submitted and filed in said cause, and the parties filed their documentary evidence which has become an official part of the record in this case;

That thereafter on the said 19th day of May, 1951, this matter came on for oral argument and the case was argued by all parties, and at the conclusion of said argument the court, being fully advised in the premises, made findings of fact and conclusions of law.

That thereafter, on May 21, 1951, the defendants, Board of Regents, State Treasurer of Oklahoma, and State Auditor of the State of Oklahoma, filed in the said court their application to modify the findings of fact and conclusions of law rendered on May 19, 1951, and the court, upon hearing the motion, sustained the motion in part and overruled it in part. Whereupon the court made the following findings of fact and conclusions of law:

Findings of Fact

The Court finds the facts in this case to be as set forth in the stipulations entered into by and between the parties, and that the parties have agreed that the case comes on for hearing on the permanent injunction.

[fol. 100] CONCLUSIONS OF LAW

1st

The Court concludes that the plaintiff is a taxpayer and citizen of the State of Oklahoma and a proper party to bring this action; it is so ordered.

2nd

The Court concludes that the effective date of Enrolled House Bill No. 8 passed by the Twenty-Third Legislature is midnight, May 9th, 1951; and it is so ordered.

3rd

The Court concludes that the teachers, professors, and other employees of the defendant, Board of Regents, may be paid from State funds for the first nine days of May, 1951; and it is so ordered.

4th

The Court concludes that each teacher, professor and employee who has wilfully or negligently failed to take and subscribe to the oath, as provided in Section 2, Enrolled House Bill No. 8, by midnight May 9th, 1951, cannot be paid from State funds, after midnight May 9th, 1951, and concludes that any teacher, professor and employee absent [fol. 101] from the State May 9th, 1951, on authorized leave, may be paid regularly and as provided by law during the time of any such absence on authorized leave, and up to and including thirty (30) days after terminating such leave, and up to and returning to work or to the duties of the office or employment of such person; and thereafter in usual and proper form, provided that such person has, during such thirty-day period after returning from said leave, taken said oath in manner and form as prescribed by law, unless an honest mistake or clerical error has been made in any oath that might have been filed, in which event a correction may be made or an amended oath filed, to clearly set it out; it is so ordered.

5th

The Court concludes that each teacher, professor, and employee who has taken and subscribed to an oath by mid-

night May 9, 1951, and filed it with the officer, agency, authority, department, commission, or institution in and for which the person executing the oath or affirmation is employed or appointed or to which said person is elected, and which oath taken and subscribed is not the oath provided in Section 2 of the Act, cannot take and subscribe to a new oath, unless an honest mistake or clerical error has been made in the preparation of the oath signed; that such teacher, professor and employee who fails to take and subscribe to the oath or affirmation required in said Act has forfeited his or her right to receive pay; it is so ordered.

[fol. 102]

6th

The Court concludes that the intervenors, and each of them, did not take and subscribe to the oath as provided in section 2 of the Act and wilfully refused to take that oath and by reason thereof the Board of Regents is enjoined from paying them, and their employment is terminated. It is so ordered.

7th

The Court concludes that the words "if necessary", following the phrase, "I will take up arms in the defense of the United States in time of War, or National Emergency, if necessary", means that the Congress of the United States within the powers granted them under the Constitution of the United States and the various selective laws passed by the Congress, will determine when and if it is necessary for any person taking and subscribing to the oath in this Act to bear arms; that such proviso is constitutional. It is so ordered.

8th

The Court concludes that non-citizens of the United States employed by the State must take and subscribe to the oath as provided in the Act, and that the words, "if necessary" following the phrase, "I will take up arms in the defense of the United States in time of War, or National Emergency, if necessary", as applied to them does not violate any of the constitutional rights guaranteed them under the Four-
[fol. 103] teenth Amendment, or other Constitutional or statutory provisions of the United States, or the Constitu-

tion or any statutory provisions of the State of Oklahoma, nor does it violate any treaty agreement with other nations or between the signers of the United Nations. The Congress of the United States, in various selective service, if any, the nationals of other countries must render, taking into consideration the treaty agreements with each country and between the United Nations. It is so ordered.

9th

The Court concludes that that portion of the said oath which requires the teachers, professors and employees of the defendant Board of Regents, including these intervenors, to state:

> "I am not affiliated directly or indirectly * * * with any agency, party, organization, association, or group whatever which has been officially determined by the United States Attorney General or other authorized agency of the United States to be a communist front or subversive organization; * * *"

and to further state:

> "That within the five (5) years immediately preceding the taking of this oath (or affirmation) I have not been a member * * * of any agency, party, organization, [fol. 104] association, or group whatever which has been officially determined by the United States Attorney General or other authorized public agency of the United States to be a communist front or subversive organization,"

are valid provisions of the law. The Court concludes that said provisions are constitutional in all respects and are applicable to any such organization which prior to April 9, 1951, has been officially determined by the United States Attorney General or other authorized agency of the United States to be a communist front or subversive organization, and the words "officially determined" mean such listed organizations as have been afforded an opportunity to present their case; Joint Anti-Faseist Refugee Committee, Petitioner, v. J. Howard McGrath, Attorney General of the United States, et al (decided by the Supreme Court of the

United States, April 31, 1951), and it was the express intention of the legislature, by the words "has been" to mean only those organizations found to be subversive prior to the effective date of the Act, to-wit: April 9, 1951, and does not apply to any organization declared to be subversive after April 9, 1951, and the Court concludes that the legislature may adopt by reference any report or lists of the United States Attorney General or other authorized agency of the United States wherein it has been officially determined that any organization is a communist front or other subversive [fol. 105] organization. It is ordered.

10th

The Court concludes that the legislature had the right, within the "police power", to enact legislation affecting the vital welfare of the State and Nation, and that Enrolled House Bill No. 8 passed by the Twenty-third Legislature does not impair the obligation of contracts; it is so ordered.

11th

The Court concludes and does hereby take judicial notice of the threat to our liberties and way of life, and that prior to the passage of this Act a person could obtain a job in our colleges, universities and public schools without declaring his loyalty to his employer, the people of the State of Oklahoma, and of the stress of the times and the need for protection from our enemies, foreign and domestic, and of the advocacy of persons, groups and organizations to overthrow our government by force and violence; and that the legislature of Oklahoma, in the exercise of its police powers, has wide discretion in determining what is necessary, as an exercise of police power, to protect the general welfare of its people, and so far as constitutional issue is concerned the power of the State, when otherwise justified, [fol. 106] is not diminished because of a private contract which may be affected. All contractual obligations between the Board of Regents and teachers, professors and employees, including the intervenors, are subject to Enrolled House Bill No. 8 of the Twenty-third Legislature; it is so ordered.

Now, it is the further order of this Court that in the event

the Board of Regents found that an honest mistake has been made in the oath so filed, in the name, designation of the position held, or any other clerical error, that said error may be corrected by the taking of a new oath.

12th

The Court concludes that the injunction should be made permanent in all things as prayed in plaintiff's petition; it is so ordered.

13th

The Court concludes that there may be clipped to the original oath a statement of a non-citizen, if he so desires, the following statement:

"I further state that I am a citizen, or subject, of ....., and that I have taken the foregoing oath, subject to my allegiance to, and rights and obligations as a citizen, or subject, of .....

Dated this ..... day of ....., 1951."

[fol. 107] And upon timely filing thereof, his rights to receive compensation shall not be prejudiced.

14th

In view of the findings and judgment of this Court, this 21st day of May, 1951, made in this litigation and this hearing, to the effect that non-nationals may be permitted to execute an additional and explanatory statement along with their oath of allegiance, the court now finds and concludes that all non-nationals who have heretofore, because of misunderstanding or honest mistake, have failed, up to this time, to execute the oath in the manner and form as provided herein, together with the explanatory statement, as provided herein, that all such non-nationals may have a reasonable time after the execution of this judgment, this date, by the Court, within which to properly prepare, take and file said oath, not to exceed 10 days; and it is so ordered.

It Is Therefore Ordered, Adjudged and Decreed by the Court that the injunction should be made permanent in all things as set forth in the conclusions of law, and that intervenors' petition for mandatory injunction is in all things denied, and costs are assessed against the defendants and

the intervenors. Exceptions allowed to all parties.

Motions for new trial of the plaintiff, the defendants, and [fol. 108] each of them, and the intervenors, and each of them, were overruled and exceptions allowed all parties; plaintiff, defendants and intervenors gave notice of their intention to appeal to the Supreme Court of Oklahoma, and the same was ordered noted on the docket; and the court ordered no supersedeas bond could be filed in said cause and gave all parties fifteen days within which to make and serve a case-made; each party to have three days to suggest amendments. The case-made and amendments shall, upon three days' notice, be submitted to the Judge who shall sign and settle the same, and cause it to be attested by the clerk. Said appeal must be lodged in the Supreme Court of Oklahoma within the time allowed by law.

Dated this 21st day of May, 1951, in Oklahoma City, Oklahoma.

W. A. Carlile, District Judge.

[fol. 109] In District Court of Oklahoma County

Notice of Intention to Appeal

Be It Remembered, that the intervenors, and each of them, in open court upon the 19th day of May, 1951, duly excepted to each and every finding of fact, and each and every conclusion of law rendered on the 19th day of May, and to the judgment of the court based thereupon and rendered on said day, which exceptions were allowed, and thereupon the intervenors, and each of them, gave notice of his, or her, intention to appeal to the Supreme Court of Oklahoma, and

Be It Further Remembered, that the intervenors, and each of them, in open court upon the 21st day of May, 1951 duly excepted to each and every finding of fact, and each and every conclusion of law rendered on May 21, 1951, and to the judgment based thereupon rendered on said day, which exceptions were allowed, and thereupon the intervenors, and each of them, gave notice of his, or her, intention to appeal to the Supreme Court of Oklahoma.

[fols. 110-111] CERTIFICATE OF JUDGE PRESIDING AT TRIAL

[Omitted in printing]

[fol. 112] IN SUPREME COURT OF OKLAHOMA

No. 35160

THE BOARD OF REGENTS OF THE OKLAHOMA AGRICULTURAL COLLEGES, A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, Plaintiffs in Error

Also

ROBERT M. WIEMAN, NANCY KENT ZIEBUR, WERNER C. BAUM, Samuel Lee Hunt, Jr., Malcolm Correll, Lillian A. Schmoe, Luella Nietz and Aboulhassan Zirakzadek, Intervenors, Plaintiffs in Error

v.

PAUL W. UPDEGRAF, Defendant in Error

OPINION—Filed October 18, 1951

SYLLABUS

1. The authority of the Legislature extends to all rightful subjects of legislation. It is not only the duty of the Legislature but it has the power to protect the general welfare of the people of the State by the exercise of the police power against subversive influences. 51 O.S. 1941 (Supp.) 37.1 to 37.8 constitutes an exercise of the police power by the Legislature. Such acts are valid so long as they are not unreasonable, arbitrary, and capricious and do not violate any of the fundamental constitutional guaranties of the State and Federal Constitutions.

[fol. 113] 2. Loyalty of public officials and employees of the state is essential to the preservation of the peace and welfare of the people and may be prescribed as a qualification to hold public office or public employment by the state.

3. A loyalty oath required by an act of the Legislature

fixing loyalty as a qualification for public officials and employees of the state may be required as a necessary precedent to the right to continue in the service of the state and draw compensation therefor so long as the terms thereof are reasonably referable and cognate to the purposes of the act and do not violate constitutional guaranties.

4. The foregoing act is not a bill of attainder or ex post facto law; nor does the oath required therein violate Article I Section 10, Constitution of the United States or Article II Section [redacted] Constitution of Oklahoma (inhibition against impairment of contract); the Fourteenth Amendment to the Constitution of the United States or Article II Section 7 of the Constitution of Oklahoma (due process clause); the First Amendment to the Constitution of the United States or Article I Section 2 of the Constitution of Oklahoma (free exercise of religion).

[fol. 114] Appeal from the District Court of Oklahoma County

The Honorable W. A. Carlile, Judge

Affirmed

Action to enjoin payment of salaries of teachers, professors, and other employees of the Oklahoma Agricultural Colleges, and cross-action for mandamus or mandatory injunction to require such payment.

Mac Q. Williamson, Attorney General; Fred Hansen, First Assistant Attorney General, of Oklahoma City, Oklahoma, for Plaintiffs in Error.

Don Emery, Robert J. Emery, Emery & Emery, of Oklahoma City, Oklahoma, for Intervenors Plaintiffs in Error.

Paul W. Updegraff, of Norman, Oklahoma, for Defendant in Error.

John G. Hervey, Ralph J. May, Hervey & May, of Oklahoma City, Oklahoma, Amicus Curiae.

[fol. 115] Arnold, C. J.:

This action was begun in the District Court on May 9, 1951, by a taxpaying citizen to enjoin the Board of Regents

of the Agricultural Colleges, the State Treasurer, and the State Auditor from paying public funds to teachers in the Agricultural and Mechanical College at Stillwater who had not subscribed to and filed the loyalty oath prescribed by Enrolled House Bill No. 8, 23rd Legislature (Laws 1951; 51 O. S. 1941 (Supp.) 37.1-37.8). A temporary restraining order was issued.

Before the date fixed for the hearing on the application for temporary injunction, certain teachers in the College who had contracts with the Board of Regents to teach at least to the end of the school term, June 30, 1951, with leave of court filed their consolidated petition in intervention and cross petitions praying for injunctive relief requiring the payment of their accrued monthly salaries.

When the cause came on for trial evidence by stipulation was introduced and entertained. The trial court made conclusions of law and entered the following judgment:

> [fol. 116] "It Is Therefore Ordered, Adjudged and Decreed by the Court that the injunction should be made permanent in all things as set forth in the conclusions of law, and that intervenors' petition for mandatory injunction is in all things denied, and costs are assessed against the defendants and the intervenors. Exceptions allowed to all parties."

The cross petitioners, none of whom had filed the oath required by the Act at the time of trial and entry of judgment in the latter part of May, 1951, and the Board of Regents make many contentions. It is not necessary nor expedient to set forth the various and varying contentions made by appellants. Only those propositions asserted which are essential to determine whether or not the trial court erred in refusing injunctive relief to intervenors will be discussed.

Pertinent to the issues raised here the act provides:

> Every officer and every employee of the State, county, school district, municipality, public agency, public authority, or public district shall within the first thirty (30) days after taking office, or within the first thirty

(30) days of such employment, take and subscribe to the oath or affirmation required by this Act. * * * [fol. 117] Any officer or employee of the State, County, school district, municipality, public agency, public authority, or public district who fails to take and subscribe the oath or affirmation required by this Act within the time specified in this Section, shall forfeit his or her office or employment.

"The oath or affirmation required by this Act shall be the following:

"I, ..., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Oklahoma against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of Oklahoma; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

"And I do further swear (or affirm) that during such time as I am ..... (Here put name of office, or, if an employee, insert 'An employee of' followed by [fol. 118] the complete designation of the employing officer, office, agency, authority, commission, department or institution.)

I will not advocate and that I will not become a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States or of the State of Oklahoma by force or violence or other unlawful means."

The Act further provides:

"No compensation nor reimbursement for expenses incurred shall be paid to any public officer or employee by any public agency unless such officer or employee has taken and subscribed to the oath or affirmation required by this Act."

The act provided for severability as to the various provisions thereof and severability as to parts of the oath.

Before going further into a specific discussion of alleged invalidity for certain stated reasons the apparent confusion as to the interpretation to be given the parts of the [fol. 119] oath required should be dispelled. The phrase of the oath which refers to affiliation "with any foreign political agency, party, organization or Government, or with any agency, party, organization, association, or group whatever which has been officially determined by the United States Attorney General or other authorized agency of the United States to be a communist front or subversive organization" refers to a list or lists of such organizations in existence at the time of the passage of the act which had been prepared by the Attorney General under Governmental directive. Such list or lists are in effect made a part of the oath by reference. It must be assumed they are readily obtainable. Nothing appears to the contrary. There was no attempt on the part of the Legislature to confer authority, judicial or otherwise, upon the Attorney General in the preparation of said list or lists. It also must be assumed that the Legislature determined for itself that all those groups so listed by the Attorney General, whether foreign or domestic, were subversive organizations or communist fronts. To illustrate: one taking the oath swears that he is not affiliated "with any foreign political agency" listed by the Attorney General as being a communist front or subversive organization. This part of the oath does not contemplate non-membership in any organization, foreign or domestic, which does not appear on the list or lists of the [fol. 120] Attorney General in existence at the time of the passage of the act. There is no requirement in the act that an oath be taken of non-membership in organizations not on the list of the Attorney General of the United States at the time of the passage of this act.

That part of the oath "that I will take up arms in defense of the United States in time of War or National Emergency, if necessary" means that the affiant will take up arms in time of War or National Emergency if by law required.

That part of the oath that says "that within the five (5) years immediately preceding the taking of this oath (or affirmation) I have not been a member of the Communist Party, * * *" refers to the same organizations listed

by the Attorney General and in existence at the time of the passage of the Act. It has no reference to organizations that may have been added by the Attorney General after the passage of the act and up to the time of the taking of the oath. The oath under this phrase is to the effect that affiant has not been a member of any of the organizations so listed by the Attorney General within the five year period previous to the taking of the oath.

The statement in the oath: "That I will support and defend the Constitution of the United States and the Constitution of the State of Oklahoma against all enemies, [fol. 121] foreign and domestic" means that the affiant, be he citizen or resident alien, will support and defend the laws of this land and the form of government which is thereby established against all enemies, that is, subversive elements, whether foreign or domestic.

That part of the oath "That I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of Oklahoma" is objected to only by a friendly alien. He asserts sincere fear that the oath in the respects hereinafter mentioned would in effect require him to forswear allegiance to his native country.

> "Allegiance is of three kinds: (1) *natural or implied*, when it arises by operation of law, as in the case of natural-born subjects; (2) *acquired*, when it is owed by a person as a result of his receiving the rights of citizenship, as by naturalization or denization; (3) *local*, when it arises merely from the fact of residing in and receiving the protection of a country as in the case of a resident alien."
>
> Webster's International Dictionary.

Obviously, a resident alien taking the oath would be pledging allegiance of the local type; there is nothing in the oath which requires him to forswear his allegiance to his [fol. 122] native country or the country of which he may be a citizen, nor is there anything in the oath which would conflict with any allegiance owed by him to the country of which he is a national. Any resident alien is bound to obey our laws as a condition of his residing here and receiving the protection of our laws, which he is entitled to if law-

fully in the United States. If an employee of the State, it is just as necessary that he be loyal to our government, its laws and institutions while here and enjoying the full protection of our laws and sharing the benefits that our institutions and form of government afford as it is that our citizens under like circumstances be loyal. He is also under the misapprehension that the requirement of the oath that "I will take up arms in the defense of the United States in time of War, or National Emergency, ~~if necessary~~" constitutes an assertion or oath by him that he would take up arms against the government of which he is a citizen. This part of the oath does not include or refer to a resident alien's native country of which he is a citizen. This conclusion is inescapable in recognition of the reasonableness and fairness of the Legislature. This interpretation will no doubt dispel any fears in the mind of such friendly alien. The Legislature did not intend to require as a condition precedent to employment by the State that one take an oath that in case of war he would bear arms against his native land.

[fol. 123] The real design and purpose of the Legislature in the enactment of House Bill No. 8 is not difficult to ascertain. The real purpose of the Legislature was to make loyalty a qualification to hold public office or be employed by the State. Incidentally and in order to effectuate its real purpose the Legislature also intended by the Act to force officers or employees of the State who are or have been within a fixed time members of the Communist Party or other subversive organizations out of governmental positions. It is now commonly known that the Communist Party and its members advocate the overthrow of government by force and violence. Such teaching and advocacy is contrary to our Democratic form of government and detrimental to the welfare of the people. The same thing may be said of any other subversive organization. Inasmuch as the authority of the Legislature extends to all rightful subjects of legislation it is not only the duty of the Legislature but it has the power to protect the general welfare of the people of the State by the exercise of the police power against subversive influences. The act in question constitutes an exercise of the police power by the Legislature. Such acts are valid so long as they are not

unreasonable, arbitrary, and capricious and do not violate any of the fundamental constitutional guaranties of the [fol. 124] State and Federal Constitutions. We recently said in the case of Palmer Oil Corp. v. Phillips Petroleum Co., et al., — Okla. —, 231 P. 2d 997:

> "The Legislature is itself the judge of the conditions which warrant legislative enactments, and they are only to be set aside when they involve such palpable abuse of power and lack of reasonableness to accomplish a lawful end that they may be said to be arbitrary, capricious, and unreasonable, and hence irreconcilable with the conception of due process of law. Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are ordinarily matters for the judgment of the Legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance."

The Act does not impair obligation of contract contrary to Article II, Section 15 of the Oklahoma Constitution and Article I, Section 10 of the Constitution of the United States.

> [fol. 125] "All parties dealing with a sovereign power, or one of its functionaries, in the exercise of governmental power, the subject of which pertains to government (schools in this case), do so knowing it cannot contract the power conferred for self-protection or self-preservation. The rule, therefore, that the Legislature can pass no law impairing the obligation of contracts does not apply to parties dealing with a department of government concerning the future exercise of powers conferred for public purposes by legislative acts, where the subject matter of the contract is one which affects the safety and welfare of the public. In such cases, 'the presumption is that, when such contracts are entered into, it is with the knowledge that parties cannot, by making agreements on subjects involving the rights of the public, withdraw such sub-

jects from the police power of the Legislature'. Chicago, B. & O. Rr. v. Nebraska, 170 U. S. 72, 42 L. Ed. 948, 18 Sup. Ct. 513."

Board of Education of the City of Leavenworth v. Phillips, 67 Kan. 549, 73 P. 97.

[fol. 126] To hold otherwise would be to subject the exercise of the police power inherently vested in a sovereign people to the will of contracting individuals. See Boston Beer Co. v. Mass., 97 U. S. 33, 24 L. Ed. 989.

The statute and the required loyalty oath do not deprive public officials and employees of property or liberty without due process of law. The intervenors are employees of the state as teachers in a public institution. They have no constitutional right to be so employed. They have no right to so serve the state except upon such terms as the state prescribes. The act does not purport to take away their right to teach. Public institutions do not have to hire nor retain employees except on terms suitable to them. People v. Crane, 214 N. Y. 154, 108 N. E. 427, L. R. A. 1916D 550; Heim v. McCall, 239 U. S. 175, 60 L. Ed. 207, 36 Sup. Ct. 78; Ellis v. U. S., 206 U. S. 246, 51 L. Ed. 1047, 27 Sup. Ct. 600; McAuliffe v. Mayer, etc., City of New Bedford, 155 Mass. 216, 29 N. E. 517.

Like the success of a business, the preservation of peace, the public welfare and the integrity of law and order, in fact, our form of government, are dependent upon loyalty of public officials and employees of government. This is well known and fully recognized by all well intentioned people. Public officials assume office and employees of the [fol. 127] state enter upon their duties with full knowledge, and in these times expectation, that the state will, if it has not already done so, make full investigation on the point and if thought expedient require an oath disclosing the attitude of public officials and employees. Loyalty should be and by House Bill No. 8, 23rd Legislature, is a prescribed qualification of public officials and employees of the state. Intervenors are such employees.

It is alleged by some conscientious objectors that the required loyalty oath invades their freedom of religion guaranteed by both the State and Federal Constitutions. The part of the oath which it is alleged so invades this guaranty

is "that I will take up arms in defense of the United States in time of War, or National Emergency, if necessary" (that is, if by valid law required). The provisions of the Constitutions against the enactment of any law pr-hibiting the free exercise of religion "embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society." Cantwell et al. v. State of Connecticut, 310 U. S. 296, 60 Sup. Ct. 900, 84 L. Ed. 1213. Though some sort of exemption has always been provided for conscientious objectors in the matter of bearing arms in time of war, such persons [fol. 128] could be legally required to bear arms. Under such a legal requirement a citizen of the United States, though a conscientious objector, would be disloyal if he absolutely refused to obey such law. Loyalty in upholding the Constitutions and laws, State and Federal, may be made a qualifying prerequisite to employment by the State. Religious practice, though in conformity with religious belief, may be interfered with where such practices are in violation of law. A conscientious objector taking the oath required can still entertain such religious beliefs as his conscience dictates and act freely in the exercise thereof so long as he does not violate or refuse to obey laws. The required oath does not invade one's constitutional right to the free exercise of religion guaranteed by Article I, Section 2 of the Oklahoma Constitution and the First Amendment of the Federal Constitution. For interesting reading on the subject see Cooley v. Watkins, 2 Idaho 590, 22 Pac. 102.

Is this act a bill of attainder or ex post facto law? A bill of attainder is a legislative act, which inflicts punishment *punishment* without judicial trial. It is contended that the act is a bill of attainder because it punishes one for refusal to take an oath that he has not been a member of listed organizations by vacating his position and denying him com- [fol. 129] pensation. We think the Supreme Court of the United States has answered the question in Garner v. City of Los Angeles, 98 A. C. A. 694, 71 Sup. Ct. 909, decided June 4, 1951. In that case civil service employees of the City of Los Angeles were discharged because they would not subscribe to an oath similar to that provided by the Oklahoma Act. In upholding the ordinance requiring the taking of

such an oath and holding that the ordinance was not a bill of attainder the United States Supreme Court said:

> "We are unable to conclude that punishment is imposed by a general regulation which merely provides standards of qualification and eligibility for employment."

An ex post facto law is one which provides a punishment for an act which was innocent when committed. Punishment is a necessary incident to either a bill of attainder or an ex post facto law. Punishment such as contemplated by the inhibiting clauses of the State and Federal Constitutions is not present here. The act is neither a bill of attainder nor an ex post facto law.

The Legislature had the power and authority to prescribe qualifications for teachers in our public institutions, and the duty to do so, and if it deemed necessary require a loyalty oath as a qualifying and necessary precedent to compensation for services rendered by employees of the state.

[fol. 130] The Legislature had the power and duty to prescribe qualifications for teachers in our public institutions. The loyalty oath required as a prerequisite to payment for teaching in our public institutions cannot be said as a matter of law to be unreasonable, arbitrary, and capricious or to violate any constitutional rights guaranteed by either the State or Federal Constitutions. All parts of the loyalty oath required appear to be reasonably related to the purposes of the Act.

The judgment denying injunctive relief to intervenors on their cross petitions is affirmed.

Halley, V. C. J., Welch, Corn, Gibson, Johnson, O'Neal, and Bingaman, JJ., Concur.

[fol. 131] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER—Filed October 24, 1951

It is hereby ordered that the name of defendant in error in the caption of the above s-yled cause be corrected to read "Paul W. Updegraff,"

Done by order of court this 24th day of October, 1951.

Ben Arnold, Chief Justice.

[fols. 132-134] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER—Filed November 16, 1951

It is hereby ordered that the vote shown on the opinion filed on October 18, 1951, be deleted.

Done by order of court this 15th day of November, 1951.

Ben Arnold, Chief Justice.

[fol. 135] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION OF INTERVENORS, PLAINTIFFS IN ERROR, FOR A REHEARING—Filed October 31, 1951

Come now Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Jr., Malcolm Correll, Lillian A. Schmoe, Luella Nietz and Aboulghassem Zirakzadeh, plaintiffs in error, who were intervenors in the Trial Court, hereinafter called petitioners, and seek a rehearing

[fol. 136] of the decision and opinion of the Court entered and rendered herein on the 18th day of October, 1951, wherein and whereby the Court affirmed the judgment of the Trial Court that "the injunction should be made permanent in all things as set forth in the conclusions of law, and that intervenors' petition for mandatory injunction is in all things denied, and costs are assessed against the defendants and the intervenors."

The sixth conclusion of law of the Trial Court read:

> "The intervenors and each of them did not take and subscribe to the Oath as provided in Section 2 of the Act, and wilfully refused to take the Oath, and by reason thereof the Board of Regents is enjoined from paying them and their employment is terminated. It is so ordered."

The applicable statute involved is referred to in the Court's opinion as: "Enrolled House Bill No. 8, 23rd Legislature (Laws 1951; 51 O. S. 1941 (Supp.) 37.1-37.8)."

The issues turn upon the assertion by petitioners, as well as other plaintiffs in error, namely, the Board of Regents of Oklahoma Agricultural and Mechanical College, A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, that the Act and the Oath required by the Act violate the constitutional righs of petitioners in several respects [fol. 137] under the Constitution of the State of Oklahoma and under the Constitution of the United States.

Since some petitioners assert a violation of their constitutional rights under the Constitution of the United States in addition to violations asserted by other petitioners, this petition for rehearing is divided into three parts so that each part will constitute a separate motion for rehearing as to petitioners embracing each separate part.

Part I will be constituted by the complaints against the Court's decision and opinion of all petitioners, and will assign grounds for rehearing common to all intervenors.

Part II will be constituted by the complaints against the Court's decision and opinion of petitioners who hold sincere religious belief that the bearing of arms against one's

fellow man is contrary to Divine Law and contrary to the Will of God.

Part III will be constituted by the complaints against the Court's decision and opinion asserted by the one petitioner who is a foreign national.

Part I

All petitioners state the following as their grounds of complaint and as reasons for a rehearing:

1. The Court wholly overlooked a question decisive of the case, namely, that the construction of the Act and the [fol. 138] Oath given by the Court in the respects hereinafter set forth, rendered the Act and the Oath as to intervenors, as of the time each intervenor was required to take the Oath, so vague that men of common intelligence must guess at its meaning and differ as to its application, and in this connection the Court wholly overlooked that the Act and the Oath denied life, liberty and property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, by denying compensation contractually due and by forfeiting contracts of employment for failure to take the Oath. The construction of the Oath hereinabove immediately referred to are:

(a) By construing "any foreign political agency, party, organization or government" as meaning any foreign political agency, party, organization or government officially determined by the United States Attorney General or other authorized agency of the United States to be a Communist front or subversive organization.

(b) By construing the language of the Oath, "that I am not affiliated directly or indirectly with" to mean "that I was not affiliated directly or indirectly with at the time of the passage of the Act."

[fol. 139] (c) By construing the language of the Oath, "that within five (5) years immediately preceding the taking of the oath I have not been a member," to mean within the five years immediately preceding the passage of the Act, without regard to when the Oath is taken.

(d) The language of the Oath, "that I will take up arms in defense of the United States in time of war or national emergency if necessary," means in respect of the words "if necessary," if by law required.

Petitioners could not be expected to know, at the time each took the Oath, that the Oath meant what the Court ultimately construed it to mean.

2. The Court wholly overlooked that, after purporting by quotations from the Act in its opinion to set forth the Oath in its entirety, there was nevertheless set forth only the first and last paragraphs of the Oath, thus rendering later references to the Oath in the Court's opinion unintelligible and required to be considered out of context, and thus rendering a review of the Court's opinion extraordinarily difficult, either upon this petition for rehearing or upon petition for review to the Supreme Court of the United States. The Court owes petitioners, under the due process [fol. 140] clause of the Fourteenth Amendment to the Constitution of the United States, the procedural right and protection to render its opinion intelligible and reasonably amenable to review, which was not done by reason of the omissions and references hereinabove set forth.

3. The Court wholly overlooked, in setting forth the first and last paragraphs of the Oath as the only parts thereof pertinent to the issues, that such paragraphs were the only paragraphs not under specific and separate attack upon asserted grounds of unconstitutionality, both in respect of the Constitution of the State of Oklahoma and of the Constitution of the United States. In this connection, it wholly overlooked including the middle or second paragraph of the Oath, which is the only paragraph of the Oath under specific and separate attack by petitioners upon said asserted unconstitutional grounds. And, additionally, in this same connection, the Court wholly overlooked that, after asserting that the first and last paragraphs of the Oath were the only parts thereof pertinent to the issues, it proceeded to discuss immediately thereafter as pertinent to the issues, in the paragraph following the first and second paragraphs of the Oath, the meaning of certain phrases and clauses of the third or middle paragraph of the Oath omitted in the Court's opinion.

4. The Court wholly overlooked considering and passing upon the following constitutional issues, decisive of the [fol. 141] case, properly and timely raised in the Trial Court by consolidated petition in intervention and by motion for a new trial and by exceptions to the Trial Court's judgment, and in the Supreme Court by assignments of error and the assertion of appropriate propositions of law in petitioners' brief. Such issues, to which the Court overlooked giving consideration, embraced provisions of both the Constitution of the State of Oklahoma and the Constitution of the United States, as follows:

(a) Constitution of the State of Oklahoma:

Article VI, Section 31a, reposing in plaintiff in error, Board of Regents, the exclusive power to govern the Oklahoma Agricultural and Mechanical College, so as to preclude on the part of the Legislature a prescription of qualification for its employees.

(b) Constitution of the United States:

That the Act and the requirements of the Oath, in respect to the bearing of arms in defense of the United States, invade the exclusive power of the Congress to raise an army, and provide a navy under Article I, Section 8 of the Constitution of the United States.

5. The Court in its decision held that:

[fol. 142] "Before going further into a specific discussion of alleged invalidity for certain stated reasons the apparent confusion as to the interpretation to be given the parts of the oath required should be dispelled. The phrase of the oath which refers to affiliation 'with any foreign political agency, party, organization or government, or with any agency, party, organization, association, or group whatever which has been officially determined by the United States Attorney General or other authorized agency of the United States to be a communist front or subversive organization' refers to a list or lists of such organizations in existence at the time of the passage of the act which had been prepared by the Attorney General under Governmental

directive. Such list or lists are in effect made a part of the oath by reference. It must be assumed they are readily obtainable. Nothing appears to the contrary. There was no attempt on the part of the Legislature to confer authority, judicial or otherwise, upon the Attorney General, in the preparation of said list or lists. It also must be assumed that the Legislature determined for itself that all those groups so listed by the Attorney General, whether foreign or domestic, were subversive organizations or communist fronts. To illustrate: one taking the oath swears that he is not affiliated 'with any foreign political agency' listed by [fol. 143] the Attorney General as being a communist front or subversive organization. This part of the oath does not contemplate non-membership in any organization, foreign or domestic, which does not appear on the list or lists of the Attorney General in existence at the time of the passage of the act. There is no requirement in the act that an oath be taken of non-membership in organizations not on the list of the Attorney General of the United States at the time of the passage of this act."

In so holding, the Court wholly overlooked the following question, decisive of the case. In so construing the Act and the Oath, employment of, or payment of compensation to, persons in the same class as all petitioners (employees of Oklahoma Agricultural and Mechanical College), who at the time the Act was passed belonged to an agency, party, association or group so determined to be Communist front or subversive after the effective date of the Act, are not proscribed by the Act and the Oath. The Act and the Oath, so construed, deny to petitioners the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States. The denial occurs because under the Act petitioners suffer loss of compensation and forfeiture of contracts of employment if they fail to foreswear membership in organizations proscribed prior to the effective date of the Act, while others [fol. 144] in the same class may continue their employment and continue to receive compensation under their contracts of employment because they are not required by law to for-

swear membership in organizations proscribed after the effective date of the Act.

In this connection, the Court held:

> "The real design and purpose of the Legislature in the enactment of House Bill No. 8 is not difficult to ascertain. The real purpose of the Legislature was to make loyalty a qualification to hold public office or be employed by the State."

The distinction and the classification thus made, using the effective date of the Act as a dividing line, bear no reasonable relation to the purpose of the Act as announced by the Court.

6. The Court in its decision held:

> "That part of the oath that says 'within the five (5) years immediately preceding the taking of this oath (or affirmation) I have not been a member of the Communist Party, * * *' refers to the same organizations listed by the Attorney General and in existence at the time of the passage of the Act. It has no reference to organizations that may have been added by the Attorney General after the passage of the act and up to the time of the taking of the oath. The oath under this [fol. 145] phrase is to the effect that affiant has not been a member of any of the organizations so listed by the Attorney General within the five-year period previous to the taking of the oath."

The Court, in so holding, wholly overlooked the following question, decisive of the case. In so construing the Act and the Oath, employment of, and payment of compensation to, persons in the same class as all petitioners (employees of Oklahoma Agricultural and Mechanical College), who at the time of the enactment of the Act belonged to an agency, party, organization or group so determined to be Communist front or subversive after the effective date of the Act, are not proscribed by the Act and the Oath. The Act and the Oath, so construed deny to petitioners the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States. The denial occurs because under the Act petitioners suffer loss of compensa-

fion and forfeiture of contracts of employment if they refuse to forswear membership in organizations proscribed prior to the effective date of the Act, while others in the same class may continue receiving compensation under contracts of employment because they are not required by law to forswear membership in organizations proscribed after the effective date of the Act.

In determining the purpose of the Act, the Court said:

> "The real design and purpose of the Legislature in [fol. 146] the enactment of House Bill No. 8 is not difficult to ascertain. The real purpose of the Legislature was to make loyalty a qualification to hold public office or be employed by the State."

The distinction and the classification thus made, using the effective date of the Act as a dividing line, bear no reasonable relation to the purpose of the Act as announced by the Court.

7. The Court wholly overlooked extending to petitioners the privilege of taking the Oath as construed by the Court, when it said:

> "Before going further into a specific discussion of alleged invalidity for certain stated reasons the apparent confusion as to the interpretation to be given the parts of the oath required should be dispelled. The phrase of the oath which refers to affiliation 'with any foreign political agency, party, organization or Government, or with any agency, party, organization, association, or group whatever which has been officially determined by the United States Attorney General or other authorized agency of the United States to be a communist front or subversive organization' refers to a list or lists of such organizations in existence at the time of the passage of the act which had been prepared by the Attorney General under Governmental [fol. 147] directive. Such list or lists are in effect made a part of the oath by reference. It must be assumed they are readily obtainable. Nothing appears to the contrary. There was no attempt on the part of the Legislature to confer authority, judicial or otherwise, upon the Attorney General in the preparation of said

list or lists. It also must be assumed that the Legislature determined for itself that all those groups so listed by the Attorney General, whether foreign or domestic, were subversive organizations or communist fronts. To illustrate: one taking the oath swears that he is not affiliated 'with any foreign political agency' listed by the Attorney General as being a communist front or subversive organization. This part of the oath does not contemplate non-membership in any organization, foreign or domestic, which does not appear on the list or lists of the Attorney General in existence at the time of the passage of the act. There is no requirement in the act that an oath be taken of non-membership in organizations not on the list of the Attorney General of the United States at the time of the passage of this act.

"That part of the oath 'that I will take up arms in defense of the United States in time of War or National Emergency, if necessary' means that the affiant will take up arms in time of War or National Emergency if by law required.

[fol. 148] "That part of the oath that says 'that within the five (5) years immediately preceding the taking of this oath (or affirmation) I have not been a member of the Communist Party, * * *' refers to the same organizations listed by the Attorney General and in existence at the time of the passage of the Act. It has no reference to organizations that may have been added by the Attorney General after the passage of the act and up to the time of the taking of the oath. The oath under this phrase is to the effect that affiant has not been a member of any of the organizations so listed by the Attorney General within the five-year period previous to the taking of the oath."

Petitioners had no way of knowing that the words, "within the five (5) years immediately preceding the taking of this oath," meant "within five (5) years immediately preceding the passage of the Act." Petitioners had no way of knowing this especially in view of the fact that, under Section 1, persons holding public employment had

thirty days after the effective date of the Act within which to take the Oath.

[fol. 149] In *Garner v. City of Los Angeles*, 71 S. Ct. 909, decided June 4, 1951, and cited by this Court in support of its holding on the bill of attainder issue, the Supreme Court of the United States said:

> "We assume that if our interpretation of the oath is correct, the City of Los Angeles will give those petitioners who heretofore refused to take the oath an opportunity to take it as interpreted, and resume their employment."

The failure of the Court to extend this privilege antecedently to, or as a condition precedent to, a denial of relief to petitioners in respect of their contracts of employment and the right to receive compensation thereunder, denies to petitioners life, liberty and property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

8. The Court, in construing the Act and the Oath, wholly overlooked a question decisive of the case, that is, the Act and the requirements of the Oath, applied to petitioners, as construed by the Court, constitute a bill of attainder in violation of Article I, Section 10 of the Constitution of the United States, because the Act required a forfeiture of petitioners' contracts of employment in effect when the Act was passed, and a denial of compensation due thereunder, for failure to forswear membership in organizations, which memberships were lawful at the time the contracts of employment were entered into.

In applying *Garner* v. *City of Los Angeles*, supra, the Court wholly overlooked the real distinction which consti- [fol. 150] tuted the basis of the holding in that case by the Supreme Court of the United States. In the *Garner* case the contracts of employment occurred after the enactment of the law by the State of California. The distinction overlooked by the Supreme Court is clearly set forth in the opinion of the United States Supreme Court, as follows:

> "The activity covered by the oath had been proscribed by the Charter in the same terms, for the same purpose, and to the same effect over seven years before,

and two years prior to the period embraced in the oath. Not the law but the fact was posterior."

As applied to petitioners in this case, it is the law that is posterior to the fact—a complete reversal of the circumstances upon which the holding of the Supreme Court of the United States was grounded in *Garner* v. *City of Los Angeles*, supra.

In deciding that the Act and the requirements of the Oath did not constitute a bill of attainder, in violation of Article I, Section 10 of the Constitution of the United States, because no punishment was involved, the Court wholly overlooked the holding of the Supreme Court of the United States in *United States* v. *Lovett*, 66 S. Ct. 1073, wherein the Supreme Court in the following language held that a denial of compensation constituted the requisite punishment to classify the Act of Congress involved as a bill of attainder:

> "The fact that the punishment is inflicted through the instrumentality of an Act specifically cutting off the pay of certain named individuals found guilty of disloyalty, makes it no less galling or effective than if it had been done by an Act which designated the conduct as criminal. * * * The effect was to inflict punishment without the safeguards of a judicial trial and 'determined by no previous law or fixed rule.' The Constitution declares that that cannot be done either by a State or by the United States."

[fol. 151] 9. The Court wholly overlooked the proposition, as urged under item 6 of the third proposition in petitioners' brief, that the vices in a state statute, which render the statute obnoxious as a bill of attainder, also render it effective to take life, liberty and property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

10. In holding that the Act and the requirements of the Oath do not impair the obligation of contracts in violation of Article I, Section 10 of the Constitution of the United States, the Court wholly overlooked the necessary operation and effect of the Act in bearing directly on contractual

relations by declaring a legislature forfeiture thereof for failure to take an oath not required by law at the time the contracts of employment were entered into. In this connection, the Court wholly overlooked its own holding in *Roth* v. *Waterfield*, 167 Okl. 209, 20 P. 2d 24, wherein the Court said:

> "In such cases due process and equal protection of the laws would seem to require compensation and protection."

In this connection, the Court held:

> "The statute and the required loyalty oath do not deprive public officials and employees of property or liberty without due process of law. The intervenors are employees of the State as teachers in a public institution. They have no constitutional right to be so employed. They have no right to so serve the state except upon such terms as the state prescribes. The act does not purport to take away their right to teach. Public institutions do not have to hire nor retain employees except on terms suitable to them. People *v.* Crane, 214 N. Y. 154, 108 N.E. 427, L.R.A. 1916D 550; Heim *v.* McCall, 239 U. S. 175, 60 L. Ed. 207, 36 Sup. Ct. 78; Ellis *v.* U. S., 206 U. S. 246, 51 L. Ed. 1047, 27 [fol. 152] Sup. Ct. 600; McAuliffe *v.* Mayer, etc., City of New Bedford, 155 Mass. 216, 29 N.E. 517."

The Court wholly overlooked that the cases it cites are applicable only to contracts entered into after the enactment of a law or laws pertaining to the subject-matter thereof, and that none of the cited cases hold that a public employee, once protected by a valid contract of employment, may be discharged if such an employee refuses to yield to new and additional terms suitable to the public agency, during the term of a contract which does not contain such terms.

In so holding, the Court wholly overlooked the holding of the United States Supreme Court in *State* v. *Brand*, 58 S. Ct. 443, wherein it held that the State of Indiana impaired the obligation of contract by repealing a tenure

statute construed to be a part of, and implicit in, a teacher's prior contract of employment. It was there held that a state, by inducing teachers to accept contracts of employment under a statute which gave them tenure, could not later, as to persons so induced, repeal the tenure policy of the state.

II. The Court wholly overlooked, in deciding that the Act and the requirements of the Oath thereunder did not take property without due process of law, that the language of the Oath was so indefinite and ambiguous that men of common understanding must guess at the meaning of the Oath. For example, men of common understanding could only guess, and in fact, could only make a very long guess, that the language of the Oath, "within five (*f*) years immediately preceding the taking of this oath," meant "within five (5) years immediately preceding the passage [fol. 153] of this Act."

12. The Court wholly overlooked that, giving to the Oath the meaning which the Court gave in its opinion, persons required to know could not be expected to know what organizations, agencies, parties and associations had been officially determined to be Communist and subversive prior to the passage of the Act. The Act provided no machinery for supplying this knowledge.

In this connection the Court, in holding "it must be assumed they (lists of subversive organizations) are readily obtainable," acted contrary to its judicial knowledge that in the highways and byways of Oklahoma, where in the act and the Oath are applicable, such lists are not readily obtainable. The Act, in failing to provide machinery for supplying persons required to take the Oath, including petitioners, with information as to the contents of such lists, denied life, liberty and property without due process of law, under the Fourteenth Amendment to the Constitution of the United States, by requiring petitioners to swear to something they could not be expected to know.

13. The Court wholly overlooked that a violation of the constitutional rights of petitioners, as set forth in their assignments of error, was not only asserted in intervenors' petition for mandatory injunction, but was asserted as well in intervenors' answer to the plaintiffs' petition in the Trial

Court for an injunction against the payment of petitioners' compensation. And in this connection, the Court wholly overlooked either affirming or reversing the judgment of [fol. 154] the Trial Court, as set forth in the Court's opinion to the effect that, "It is therefore ordered, adjudged and decreed by the Court that the injunction should be made permanent in all things as set forth in the Conclusions of Law." And in this connection, the Court wholly overlooked that this aspect of the judgment of the Trial Court violated the constitutional rights of petitioners without regard to the denial of the petition for mandatory injunction, as asserted in the consolidated petition for intervention, the exceptions to the judgment of the Trial Court, the petitioners' motion for a new trial, the petitioners' assignments of error, and the presentation of the assignments of error under appropriate propositions of law in the petitioners' brief.

Part II

Petitioners Baum, Lee, Correll, Schmoe and Nietz state the following as their grounds of complaint and as reasons for a rehearing, in addition to those asserted by all petitioners under Part I:

1. The Court wholly overlooked an issue decisive of the case as to said petitioners, namely, the enactment by the Congress of the United States of a complete, comprehensive and fully integrated scheme, in the exercise of its power under Article I, Section 8 of the Constitution of the United States, to raise an army and provide a navy and organize and discipline a militia; that in exercising such power the Congress enacted the Selective Service Act of 1948, [fol. 155] U.S.C.A. 1951, Supplementary Pamphlet Title 50, Sec. 451, et seq., providing that:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." (Sec. 456(j).)

The Court overlooked the fact that, the Congress in the exercise of such power having decided to exempt persons

opposed to participation in war by virtue of religious training and belief, the requirement of the Oath that one swear to take up arms in defense of the United States in time of war or national emergency, if necessary, is an unconstitutional invasion of the exclusive power of the Congress under said Article I, Section 8, and that a decision of the United States Supreme Court is decisive of that issue, namely, *Hines, Secretary of Labor & Industry of Pa., et al.* v. *Davidowitz, et al.*, 61 S. Ct. 399.

2. The Court, in holding that the requirement of the Oath that one take up arms in defense of the United States did not invade the constitutional rights of petitioners, protected by the First Amendment to the Constitution of the United States, overlooked that intervenors did not assert that the Oath and the Act violated the First Amendment to the Federal Constitution. The First Amendment to the Federal Constitution inhibits only conduct of the Congress. It was the freedom of belief and practice, implicitly protected in [fol. 156] the due process clause of the Fourteenth Amendment to the Constitution of the United States, that petitioners assert a violation of, in requiring that one take an oath to bear arms contrary to his religious belief.

In this same connection, the Court overlooked entirely the holding and application, decisive of this case, by the Supreme Court of the United States in *Cantwell, et al.* v. *State of Connecticut*, 60 S. Ct. 900. While in that case the Supreme Court of the United States recognized that freedom to act on religious grounds is subject to regulation for the protection of society, it held that it is only when the threatened religious act creates a clear and present danger that suppression of the threatened action is justified.

The Court overlooked the decisive application of *West Virginia Board of Education, et al.* v. *Barnette, et al.*, 63 S. Ct. 1178, cited on page 88 of petitioners' brief. In that case the Supreme Court of the United States held that a refusal to salute the flag did not create any clear and present danger by compelling one to utter something that was not in his mind. The Court, in holding that relegious practice, although in conformity with religious belief, may be interfered with where such practice is in violation of law, wholly overlooked the constitutional requirement that it is

only when such religious practice creates a clear and present danger that its frustration is justified under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

[fol. 157] Additionally, in this connection, the Court wholly overlooked that the petitioners were not seeking to engage in any conduct. They wished simply to remain silent and inactive. Their refusal to take the Oath to bear arms in defense of the United States must be held to create a clear and present danger, which the taking of the Oath will be calculated to prevent, in order to justify this requirement of the Oath under the due process clause of the Constitution of the United States.

III

Petitioner Aboulghassem Zirakzadeh states the following as his grounds of complaint and as reasons for a rehearing, in addition to those asserted by all petitioners under Part I:

1. The Court wholly overlooked a question decisive of the case, namely, that the construction of the Act and the Oath given by the Court, as applied to Aboulghassem Ziraksadeh, a foreign national, in the respect hereinafter set forth, rendered the Act and the Oath as to him, as of the time he was required to take the Oath, so vague that men of common intelligence must guess at its meaning and differ as to its applications, and in this connection, the Court wholly overlooked that the Act and the Oath denied life, liberty and property without due process of law by denying compensation lawfully due and by forfeiting his contract of employment for failure to take the Oath. The construction of the Oath hereinabove immediately reffered to:

> [fol. 158] "He is also under the misapprehension that the requirement of the oath that 'I will take up arms in defense of the United States in time of War or National Emergency, if necessary' constitutes an assertion or oath by him that he would take up arms against the government of which he is a citizen. This part of the oath does not include or refer to a resident alien's native country which he is a citizen. This conclusion is inescapable in recognition of the reasonableness and fairness of the Legislature. This interpretation will no

doubt dispel any fears in the mind of such friendly alien. The Legislature did not intend to require as a condition precedent to employment by the State that one take an oath that in case of war he would bear arms against his native land."

The construction referred to immediately above is especially vague because earlier in the opinion the Court said:

"That part of the oath 'that I will take up arms in defense of the United States in time of War or National Emergency, if necessary,' means that the affiant will take up arms in time of War or National Emergency if by law required."

This places the petitioner, Aboulghassem Zirakzadeh, as a person of common intelligence, in the position of not knowing whether the part of the Oath under consideration means that in no event will he be required to bear arms against his native land, or whether the Oath requires that he must surely bear arms against his native land if the Congress by law requires that all foreign nationals do so.

2. The Court, in construing that part of the Oath referring to the defense of the United States, as it applied to a foreign national, held to the following effect in the following language:

"He is also under the misapprehension that the requirement of the oath that 'I will take up arms in the defense of the United States in time of War, or National Emergency, if necessary' constitutes an assertion or oath by him that he would take up arms against the government of which he is a citizen. This part of [fol. 159] the oath does not include or refer to a resident alien's native country of which he is a citizen. This conclusion is inescapable in recognition of the reasonableness and fairness of the Legislature. This interpretation will no doubt dispel any fears in the mind of such friendly alien. The Legislature did not intend to require as a condition precedent to employment by the State that one take an oath that in case of war he would bear arms against his native land."

In so holding, the Court overlooked that the Congress had enacted a complete, comprehensive and fully integrated scheme, in the exercise of its power under Article I, Section 8 of the Constitution of the United States, to raise an army and provide a navy and organize and discipline a militia, and that in the exercise of such power provided:

> "Any citizen of a foreign country, who is not deferrable or exempt from training and service under the provisions of this title (other than this subsection), shall be relieved from liability for training and service under this title if, prior to his induction into the armed forces, he has made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President; but any person who makes such application shall thereafter be debarred from becoming a citizen of the United States." Title 50, A.P.P. 454, U.S.C.A. 1951, Supplementary Pamphlet p. 108.

The Court overlooked the fact, in holding that the requirements of the Oath did not mean that a foreign national is required to take up arms against his native country, that such construction of the Act and the Oath was in conflict with the above quoted section of the Selective Service Act adopted by the Congress June 24, 1948, Title I, 62 Stats. 604.

Additionally, in this same connection, the Court overlooked the fact that the Act and the Oath, so conflicting with the Selective Service Act of the Congress, and having dealt with the identical subject matter dealt with by the Congress in said Selective Service Act, constitute, with [fol. 160] respect to petitioners, an unconstitutional exercise of powers delegated exclusively to the Congress under said Article I, Section 8 of the Constitution of the United States, authorizing the Congress to set and determine the policies implicit in raising an army, providing a navy, and organizing and disciplining a militia.

3. The Court wholly overlooked considering and passing upon the following constitutional issue, properly and timely raised in the Trial Court by consolidated petition in intervention and by motion for a new trial and by exceptions to the Trial Court's judgment, and in the Supreme Court by

assignments of error and the assertion of appropriate propositions of law in petitioners' brief. Such issue, to which the Court overlooked giving consideration, embraced provisions of both the Constitution of the State of Oklahoma and the Constitution of the United States, as follows:

> That the Act and the requirements of the Oath as to petitioner Aboulghassem Zirakzadeh invade the exclusive power of the Congress to regulate commerce among foreign nations, in violation of Article II, Section 8 of the Constitution of the United States.

Wherefore, premises considered, these petitioners, Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Jr., Malcolm Correll, Lillian A. Schmoe, Luella Nietz, and Aboulghassem Zirakzadeh, pray that they, and each of them, be granted a petition for a rehearing [fols. 161-162] herein, and that upon the hearing thereof this Court withdraw its prior decision and enter a decision reversing the judgment of the Trial Court, in which a judgment was rendered enjoining payment of petitioners' compensation under validly existing contracts of employment, and render a judgment in favor of each petitioner, requiring that everything necessary be done to effect payment to each petitioner under his contract of employment with the Board of Regents of Oklahoma Agricultural Colleges.

Because of the importance of the decision in these cases, both to these petitioners and to all concerned, and because of its importance as a precedent in other cases, petitioners further pray that their petition for rehearing, and the Court's further consideration thereof, be set for oral argument.

> Respectfully submitted, Don Emery, Robert J. Emery, Emery & Emery. By (Signed) Don Emery, Attorneys for Petitioners, 462 First National Building, Oklahoma City, Oklahoma.

Proof of Service (omitted in printing).

[fol. 163] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

PRAECIPE—Filed January 24, 1952

To the Clerk of the Supreme Court of the State of Oklahoma:

You will please prepare a transcript of the record in the above entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include in said transcript the following:

[fol. 164] 1. Petition (C. M. 7-9).
2. Order Granting Intervenors Permission to File Consolidated Petition (C. M. 30-31).
3. Consolidated Petition in Intervention and Cross-Petition (C. M. 33-46).
4. Answer (C. M. 60-62).
5. Answer to Cross-Petition of Intervenors (C. M. 63-65).
6. Answer to Plea of Intervention (C. M. 66-68).
7. Reply (C. M. 69-71).
8. Stipulations of Counsel in Open Court (C. M. 72-77).
9. Written Stipulation without Exhibits (C. M. 86-90).
10. Intervenors' Motion for New Trial (C. M. 216-225).
11. Order Overruling Motion of Intervenors for New Trial (C. M. 226-228).
12. Journal Entry of Judgment (C. M. 235-246).
13. Notice of Intention to Appeal (C. M. 246A).
14. Certificate of Trial Judge (C. M. 255-256).
15. Petition in Error of Intervenors Robert M. Wieman and Nancy Kent Ziebur.
16. Petition in Error of Intervenors Werner C. Baum, Samuel Hunt Lee, Jr., Malcolm Correll, Lillian A. Schmoe, and Luella R. Nietz.
[fol. 165] 17. Opinion of the Supreme Court of the State of Oklahoma in No. 35160 on the Docket of Said Court.
18. Motion for Rehearing.
19. Order Overruling Motion for Rehearing.
20. Petition for Appeal.

21. Order Allowing Appeal.
22. Citation on Appeal.
23. Assignment of Errors.
24. Statement of Jurisdiction of the Supreme Court of the United States.
25. Statement of Appellants Directing Attention to Paragraph 3 of Rule 12 of Revised Rules of the Supreme Court of the United States.
26. Certificate of Service of Notice of Appeal.
27. This Praecipe.

Dated: January 24, 1952.

H. D. Emery, Counsel for Appellants, Robert M. Wyeman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Jr., Malcolm Correll, Lillian A. Schmoe, and Luella Nietz.

[fol. 166] Acknowledgment of Service (omitted in printing).

[fols. 167-225] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed January 18, 1952

Appellants, Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Jr., Malcolm Correll, Lillian A. Schmoe, and Luella Nietz, and each of them, called intervenors, plaintiffs in error in the Supreme Court of the [fol. 226] State of Oklahoma, complain of the judgment rendered by said court in the above styled cause on October 18, 1951, then pending on the docket of said court, and assign as grounds for reversal the following errors in the record, proceedings and judgment in said cause:

Assignment of Errors

1. The Supreme Court of the State of Oklahoma erred in failing to hold that a statute of the State of Oklahoma,

namely, enrolled House Bill No. 8, 23rd Legislature (Laws 1951; 51 O. S. 1941 (Supp.) 37.1-37.8), violated the constitutional rights of each of the appellants, which statute prohibited payment of accrued salaries to each plaintiff in error due under a valid contract of employment entered into prior to the enactment of said statute, and forefeited said contract of employment without judicial trial for failure of each petitioner to subscribe and file with designated authorities the Oath required by said statute, which Oath, among other [fol. 227] things, is to the effect that each petitioner swear that at any time within five years immediately preceding the enactment of said statute he had not been a member of any agency, party, organization, association or group whatever which had been officially determined, prior to the enactment of said statute, by the United States Attorney General of other authorized agency to be a Communist front or subversive organization, in that the operation and effect of said statute as set forth above impaired the obligation of contracts, contrary to Article 1, Section 10 of the Constitution of the United States providing that no state shall pass any law impairing the obligation of contracts.

2. The Supreme Court of the State of Oklahoma erred in failing to hold that said statute violated the constitutional rights of each plaintiff in error, which statute prohibited payment of accrued salaries to each plaintiff in error due under a valid contract of employment entered into prior to the enactment of said statute, and forfeited said contract of [fol. 228] employment without judicial trial for failure of each petitioner to subscribe and file with designated authorities the Oath required by said statute, which Oath, among other things, is to the effect that each petitioner swear that at any time within five years immediately preceding the enactment of the said statute he had not been a member of any agency, party, organization, association or group whatever which had been officially determined, prior to the enactment of said statute, by the United States Attorney General or other authorized agency to be a Communist front or subversive organization, in that the operation and effect of said statute as set forth above inflicts, without judicial trial, the punishment of loss of accrued salaries and forfeiture of employment, of each appellant, thus constituting said stat-

ute a bill of attainder, contrary to Article I, Section 10 of the Constitution of the United States providing that no state shall pass a bill of attainder.

3. The Supreme Court of the State of Oklahoma erred in failing to hold that said statute violated the constitutional [fol. 229] rights of each plaintiff in error, which statute prohibited payment of accrued salaries to each plaintiff in error due under a valid contract of employment entered into prior to the enactment of said statute, and forfeited said contract of employment without judicial trial for failure of each petitioner to subscribe and file with designated authorities the Oath required by said statute, which Oath, among other things, is to the effect that each petitioner swear that at any time within five years immediately preceding the enactment of the said statute he had not been a member of any agency, party, organization, association or group whatever which — been officially determined, prior to the enactment of said statute, by the United States Attorney General or other authorized agency to be a Communist front or subversive organization, in that the operation and effect of said statute as set forth above inflicts, without judicial trial, the punishment of loss of accrued salaries and forfeiture of employment, of each appellant, thus depriving each appellant of liberty and property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States providing that no state shall deprive any person of life, liberty or property without due process of law.

[fol. 230] 4. The Supreme Court of the State of Oklahoma erred in failing to hold that said statute violated the constitutional rights of each plaintiff in error, which statute prohibited payment of accrued salaries to each plaintiff in error due under a valid contract of employment entered into prior to the enactment of said statute, and forfeited said contract of employment without judicial trial for failure of each petitioner to subscribe and file with designated authorities the Oath required by said statute, which Oath, among other things, is to the effect that each petitioner swear that at any time within five years immediately preceding the enactment of said statute he had not been a member of any agency, party, organization, association or group whatever which had been officially determined, prior to the enactment of said

statute, by the United States Attorney General or other authorized agency to be a Communist front or subversive organization, in that the operation and effect of said statute as set forth above inflicts, without judicial trial, the punishment of loss of accrued salaries and forfeiture of employ-
[fol. 231] ment, of each appellant, thus having no reasonable relation to the purpose of said statute and thus depriving each appellant of liberty and property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States providing that no state shall deprive any person of life, liberty or property without due process of law.

5. The Supreme Court of the State of Oklahoma erred in failing to hold that said statute violated the constitutional rights of each plaintiff in error, which statute prohibited payment of accrued salaries to each plaintiff in error due under a valid contract of employment entered into prior to the enactment of said statute, and forfeited said contract of employment without judicial trial for failure of each petitioner to subscribe and file with designated authorities the Oath required by said statute which, among other things, required that each petitioner swear that he "will take up arms in defense of the United States in time of war or national emergency, if necessary," (If necessary was construed by [fol. 232] said court to mean "if by valid law required.") in that the operation and effect of said statute as set forth above violates Article I, Section 8 of the Constitution of the United States, delegating exclusively to the Congress of the power to raise and support armies and provide and maintain the navy, by interfering with the enforcement of a complete, comprehensive and fully integrated scheme enacted by the Congress as the Selective Service Act of 1948, and in effect at the time of the enactment of said statute.

6. The Supreme Court of the State of Oklahoma erred in failing to hold that said statute violated the constitutional rights of each plaintiff in error, which statute prohibited payment of accrued salaries to each plaintiff in error due under a valid contract of employment entered into prior to the enactment of said statute, and forfeited said contract of employment without judicial trial for failure of each petitioner to subscribe and file with designated authorities the

Oath required by said statute, which Oath is so vague that men of common intelligence must guess at its meaning and differ as to its application, thus rendering the operation and effect of said statute as set forth above a deprivation of [fol. 233] liberty and property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, which provides that no state shall deprive any person of life, liberty or property without due process of law. The respects in which the Oath is vague appear, by virtue of the construction of the language of the Oath by the Supreme Court of Oklahoma in its said judgment and decision, as follows:

(a) By construing that "I am not affiliated directly or indirectly with . . . any foreign political agency, party, organization or government" as meaning any foreign political agency, party, organization or government officially determined by the United States Attorney General or other authorized agency of the United States to be a Communist front or subversive organization.

(b) By construing the language of the Oath, "that I am not affiliated directly or indirectly with" to mean "that I am not affiliated directly or indirectly with at the time of the passage of the Act."

[fol. 234] (c) By construing the language of the Oath, "that within five (5) years immediately preceding the taking of the oath I have not been a member," to mean within the five years immediately preceding the passage of the Act, without regard to when the Oath is taken.

(d) The language of the Oath, "that I will take up arms in defense of the United States in time of war or national emergency if necessary," means in respect of the words "if necessary," if valid law required.

7. The Supreme Court of Oklahoma committed error in failing to extend to each petitioner, as a condition precedent to its affirmance of the judgment of the District Court of Oklahoma, the privilege of taking the Oath in the light of its construction of said statute as set forth in Assignment of Error No. 6. That such error constituted a violation of the

constitutional rights of each appellant by taking his liberty [fol. 235] and property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

8. The Supreme Court of the State of Oklahoma erred in failing to hold said statute violated the constitutional rights of plaintiffs in error Lee, Correll, Nietz, Schmoe and Baum, each holding sincere religious conviction opposing the bearing of arms against his fellow man, which statute prohibited payment of accrued salaries to each of said plaintiffs in error, due under a valid contract of employment entered into prior to the enactment of said statute, and forfeited said contract of employment without judicial trial for failure of each of said plaintiffs in error to subscribe and file the Oath with designated authorities required by said statute, which oath, among other things, is to the effect that each said petitioners swears that he will ~~take up arms in~~ defense of the United States in time of war or national emergency, if necessary, in that the operation and effect of said statute, as set forth above, constitutes a law respecting the free exercise [fol. 236] of religion, contrary to the Fourteenth Amendment to the Constitution of the United States providing that no state shall deprive any person of life, liberty or property without due process of law.

For which said errors each appellant, namely, Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Jr., Malcolm Correll, Lillian A Schmoe, and Luella Nietz prays that said judgment and decision of the Supreme Court of the State of Oklahoma in the above styled cause dated October 18, 1951, be reversed, and that a judgment be entered holding invalid said statute of the State of Oklahoma, namely, enrolled House Bill No. 8, 23rd Legislature (Laws 1951; 51 O. S. 1941 (Supp.) 37.1-37.8), and that the Supreme Court of Oklahoma be directed to issue a mandatory injunction directed to the Board of Regents of the Oklahoma Agricultural Colleges, A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma, requiring them, and each of them, to make payment of accrued salaries due under their contracts of employment with the Board of Regents of the Oklahoma Agricultural Col-

leges, and that the appellants, and each of them, be awarded their costs.

[fol. 237] Dated this 18th day of January, 1952.

Emery & Emery, H. D. (Don) Emery, Robert J. Emery, Attorneys for Appellants, Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Jr., Malcolm Correll, Lillian A. Schmoe, and Luella Nietz.

[fols. 238-240] Statement required by Paragraph 2, Rule 12 of the Rules of the Supreme Court of the United States (omitted in printing).

[fols. 241-250] Bond on Appeal for $250.00 approved and filed January 31, 1952, omitted in printing.

[fol. 251] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION FOR APPEAL—Filed January 18, 1952

To the Honorable Ben Arnold, Chief Justice of the Supreme Court of the State of Oklahoma:

Come now the petitioners Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Jr., Malcolm Correll, Lillian A. Schmoe, and Luella Nietz, and each of them, intervenors, plaintiffs in error, in the above entitled [fol. 252] cause, by their attorneys, and respectfully show:

1. The Supreme Court of the State of Oklahoma, the highest court of said state, on October 18, 1951, in the above styled cause rendered against these petitioners, and each of them, a judgment and opinion, as the case may be, affirming a judgment of the District Court of Oklahoma County, Oklahoma, "that intervenors' [these petitioners] petition

for mandatory injunction is in all things denied and costs are affixed against the defendants and intervenors. Exceptions allowed to all parties." These petitioners, and each of them, by cross-petition sought a mandatory injunction against the Board of Regents of the Oklahoma Agricultural Colleges, A. S. J. Shaw, State Treasurer of the State of Oklahoma, and Wilburn C. Cartwright, State Auditor of the State of Oklahoma (who were also plaintiffs in error), to compel said parties, and each of them, to do everything necessary to make payment and to make payment to these [fol. 253] petitioners of accrued salaries due under a valid and subsisting contract in effect between each of these petitioners and the said Board of Regents. This cross action was filed in an action instituted by Paul W. Updegraff, defendant in error, seeking to enjoin the payment of compensation to all employees of the said Board of Regents, including these petitioners, who failed to subscribe to and file the Loyalty Oath prescribed by enrolled House Bill No. 8 23rd Legislature (Laws 1951; 51 O. S. 1941 (Supp.) 37.1-37.8). The Supreme Court of the State of Oklahoma, in its judgment and opinion declared, "only those propositions asserted which are essential to determine whether or not the trial court erred in refusing injunctive relief to intervenors [these petitioners] will be discussed." The parties above named as plaintiffs in error, including these petitioners, are all the parties appearing in person or by counsel in said cause, other than Paul W. Updegraff, defendant in error, and Aboulghassem Zirakzadeh, intervenor, plaintiff in error, who does not choose to appeal to the Supreme Court of the United States.

[fol. 254] 2. Each of petitioners, at the time of the institution of this action by defendant in error, Paul W. Updegraff, was rendering service to Oklahoma Agricultural and Mechanical College in Stillwater, Oklahoma, in the following capacity: Robert M. Wieman was Assistant Professor of Philosophy; Nancy Kent Ziebur was Research Assistant for Research Foundation; Werner C. Baum was Assistant Professor of Botany; Samuel Hunt Lee, Jr. was Associate Professor of Chemistry; Malcolm Correll was Professor of Physics and Chairman of Physical Science; Lillian A. Schmoe was a Secretary; and Luella Nietz was Assistant

Professor of Music. Said college is governed by said Board of Regents.

3. On the 1st day of November, 1951, being within the time allowed under the applicable rule of the Supreme Court of Oklahoma (Rule 28 Rehearings), petitioners, and each of them, filed their petitions for rehearing with said court, which said petit-ons, and each of them, were denied by order of said court dated November 6, 1951, by reason [fol. 255] whereof said judgment of the District Court of Oklahoma County and said judgment of the Supreme Court of Oklahoma will become final as to each of petitioners, unless the petitioners, and each of them, are allowed an appeal to the Supreme Court of the United States.

4. In the record and proceedings and in the rendition of said judgment by the District Court of Oklahoma County, Oklahoma, and in the rendition of said judgment by the Supreme Court of the State of Oklahoma, there was drawn in question by petitioners, and each of them, the validity of a statute of the State of Oklahoma (enrolled House Bill No. 8, 23rd Legislature (Laws 1951; 51 O. S. 1941 (Supp.) 37.1-37.8), and each word, phrase, clause, sentence or other portion thereof, on the ground that as to petitioners, and each of them, said statute, *and each of them, said statute,* and each word, phrase, clause, sentence or other portion thereof, are in contravention of Article I, Section 10, as constituting a law impairing the obligation of contract and as constituting a bill of attainder, and on the [fol. 256] ground that said statute, and each word, phrase, clause, sentence or other portion thereof, are in contravention to the Fourteenth Amendment to the Constitution of the United States, by taking life, liberty and property of petitioners, and each of them, without due process of law, and by denying to petitioners, and each of them, the equal protection of the laws. The judgment of the District Court of Oklahoma County, Oklahoma, and the judgment of the Supreme Court of the State of Oklahoma were in favor of the validity of said statute, and each word, phrase, clause, sentence or other portion thereof.

5. If said judgment of the District Court of Oklahoma County and the judgment of the Supreme Court of the State of *the state of* Oklahoma are permitted to become final,

manifest error will occur, greatly to the damage of petitioners, and each of them. The facts in such regard, as disclosed by the record, are as follows: These petitioners, and each of them, during the term of their contracts with said Board of Regents to serve Oklahoma Agricultural and Mechanical College, are denied compensation provided therein and due thereunder for services performed and to be performed pursuant thereto.

[fol. 257] 6. The errors upon which petitioners claim to be entitled to an appeal are more fully stated and set out in their assignments of error and statement of jurisdiction filed herewith.

Wherefore, petitioners, and each of them, pray for allowance of appeal from the Supreme Court of the State of Oklahoma, the highest court of said state, to the Supreme Court of the United States, in order that the said judgment and decision of the Supreme Court of the State of Oklahoma may be examined and reversed; and petitioners, and each of them, also pray that a transcript of the record, proceedings and papers in said cause No. 35160 in the Supreme Court of the State of Oklahoma, duly authenticated by the Clerk of the Supreme Court of the State of Oklahoma, may be sent to the Supreme Court of the United States, as provided by law; that citation be issued in accordance with law; that an order be made with respect to the appeal bond be given by petitioners, and each of them; that the amount of security be fixed by the order allowing the appeal.

[fol. 258] Dated, this 18th day of January, 1952.

Respectfully submitted, Emery & Emery, H. D. (Don) Emery, Robert J. Emery, Attorneys for Petitioners Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Jr., Malcolm Correll, Lillian A. Schmoe, and Luella Nietz.

[fol. 259] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER ALLOWING APPEAL—Filed January 18, 1952

It appearing to the undersigned, the Chief Justice of the Supreme Court of the State of Oklahoma, that intervenors, [fol. 260] plaintiffs in error in the above captioned cause, Robert M. Wieman, Nancy Kent Ziebur, Werner C. Baum, Samuel Hunt Lee, Jr., Malcolm Correll, Lillian A. Schmoe, and Luella Nietz, hereinafter called "appellants," have filed their petition for appeal with assignment of errors to the Supreme Court of the United States, and also their statement as to the jurisdiction of the Supreme Court of the United States, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment, decree and decision of the Supreme Court of Oklahoma in the above entitled cause;

Now, therefore, the premises considered, it is ordered that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the judgment, decree and decision rendered in this cause on October 18, 1951, and made final by denial of petition for rehearing by order of the Supreme Court of Oklahoma entered and effective November 6, 1951.

[fol. 261] It is further ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of $250.00 with good and sufficient surety, and shall be conditioned as may be required by law.

It is further ordered that the Clerk of the Supreme Court of the State of Oklahoma shall, within the time and as required by law, prepare, certify and transmit under his hand and the seal of the Supreme Court of the State of Oklahoma to the Clerk of the United States Supreme Court a transcript of the record herein, containing a true copy of all material parts of said record, which shall be designated by praecipe filed with him by any of the parties to said appeal.

It is further ordered that citation shall issue in accordance with law.

Dated this 18th day of January, 1952.

[fol. 262] Ben Arnold, Chief Justice of the Supreme Court of the State of Oklahoma.

[fols. 263-264] Citation in usual form showing service on Paul W. Updegraff omitted in printing.

[fol. 265] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 266] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed February 16, 1952

a. Appellants adopt for their statement of points upon which they intend to rely in their appeal to this Court the points contained in their Assignment of Errors heretofore filed.

b. Appellants designate the entire record, as filed in the above-entitled case, for printing by the Clerk of this Court.

H. D. Emery, Counsel for Appellants.

[fols. 267-268] Acknowledgment of Service

The undersigned, Attorney General of the State of Oklahoma, attorney for A. S. J. Shaw, State Treasurer of the State of Oklahoma, Wilburn C. Cartwright, State Auditor of the State of Oklahoma, and The Board of Regents of The Oklahoma Agricultural Colleges, hereby acknowledges that on February 13, 1952, he was served with a copy

of the foregoing Statement of Points to be Relied upon and Designation of Parts of the Record to be Printed.

Mac I. Williamson, Atty. Gen. of Okla.; Fred Hansen, 1st Asst. Atty. Gen.

Proof of Service

I, H. D. Emery, counsel for appellants, hereby certify that on the 13th day of February, 1952, I mailed a true and correct copy of the foregoing Statement of Points to be Relied upon and Designation of Parts of the Record to be Printed, by registered mail, with postage prepaid and properly addressed, to Paul W. Updegraff, Appellee, Norman, Oklahoma.

H. D. Emery, Counsel for Appellants.

Acknowledgment of Service

The undersigned Appellee hereby acknowledges that on February —, 1952, he was served with a copy of the foregoing Statement of Points to be Relied upon and Designation of Parts of the Record to be Printed.

Paul W. Updegraff, Appellee.

[fol. 269] Supreme Court of the United States, October Term, 1951

[Title omitted]

Order—March 10, 1952

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.